

Forum for International Criminal Justice Newsletter: September 2017

Welcome to the IAP's Forum for International Criminal Justice (FICJ) September 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 news covered in this Newsletter includes:

Myanmar government inquiry finds no crimes against humanity in Rakhine violence, while the **UK** calls for UN Security Council meeting over reports of Rohingya civilian casualties from raids by **Myanmar** forces; **US** foreign policy posts, including War Crimes Ambassador, are saved from getting axed; **UK** High Court decides Tony Blair will not to be prosecuted over Iraq War.

***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 Secretariat: info@iap-association.org.

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



Video Highlights



[Click here](#) to watch a new legacy video on the ICTY, the first international criminal court after Nuremberg and Tokyo, and its groundbreaking achievements over the past 24 years



[Click here](#) to watch an interview with Brenda Hollis, Prosecutor, Residual Special Court for Sierra Leone: "The investigation and prosecution of international and transnational crimes are bound to fail, without inter-state co-operation"



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Auswärtiges Amt



GERMANY
CANDIDATE FOR
THE UNITED NATIONS
SECURITY COUNCIL
2019-20

ACCOUNTABILITY FOR INTERNATIONAL CRIMES COMMITTED IN SYRIA – WHERE DO WE STAND?



Human Rights

The Federal Foreign Office cordially invites you to attend the symposium *Accountability for international crimes committed in Syria – where do we stand?* in Berlin on 6 October 2017.

The atrocities that have taken place in Syria during the past years have shocked us all. NGOs, national law enforcement agencies and the United Nations are working intensively toward the shared goal of holding accountable the perpetrators of international crimes committed in Syria. The increasing number of national investigations of, and judgements on, war crimes committed in Syria is a visible achievement and gives cause for hope. Recent information presented by NGOs shows how urgent it is for us to step up national and international efforts to secure evidence and work towards establishing criminal responsibility for these atrocities.

The symposium will bring together key international actors from NGOs, the United Nations, national and international prosecution authorities as well as defence counsel to take stock of the many efforts that have been made so far. Participants will discuss the challenges they face as they pursue accountability, in an effective and coordinated way, for international crimes committed in Syria.

We hope you will be able to attend. Registration is required, via email, no later than 8 September (syriasymposium@zentrale.auswaertiges-amt.de).

The number of participants is limited.

PLACE & TIME

6 OCTOBER 2017, 2.00 p.m.
FEDERAL FOREIGN OFFICE
WERDERSCHER MARKT 1
10117 BERLIN

PUBLIC TRANSPORT

U2 – HAUSVOGTEIPLATZ
U6 – FRANZÖSISCHE STRASSE
BUS 147 – WERDERSCHER MARKT
BUS M48 – SPITTELMARKT

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International Criminal Court must act on Yazidi atrocity

***Doughty Street Chambers**, opinion by Kirsty Brimelow QC*

doughty street chambers



The third anniversary of the massacre of Yazidis at Mount Sinjar – now known to the community as the mountain of death – was on 3 August 2017. Images of a peaceful community trapped on a desolate mountain, unable to escape and awaiting death, targeted by Islamic State because of its ancient religion, are seared onto many memories. Thousands of men and older women were summarily killed. Younger women were captured and more than 3,000 remain captive, sexually enslaved and subjected daily to rape, sexual violence and torture. Boys have been forcibly converted and conscripted into Isis's forces. More than 360,000 Yazidis were displaced.

The Global Justice Centre in New York and the human rights committee of the Bar Council of England and Wales recently lodged a legal submission with the prosecutor of the International Criminal Court, Fatou Bensouda. It argued that she has jurisdiction to open a preliminary examination into Isis's acts of genocide and other grave crimes against the Yazidis.

The UN, the European parliament and the EU have declared that crimes against the Yazidis constitute genocide, but there has not been a single prosecution of an Isis fighter for genocide or crimes against humanity. States have clear obligations under international law to punish war crimes, crimes against humanity and genocide. While Germany has led the way in issuing arrest warrants, efforts to achieve justice are fragmented. Accountability is a patchwork, with terrorism prosecutions in domestic jurisdictions around the world, including in Iraq, and a handful of potential cases under universal jurisdiction in Germany.

An ad hoc or hybrid tribunal in Iraq has been suggested, as has a referral of Syria or Iraq to the International Criminal Court (ICC) and a specialised Isis court. However, the implementation of these remedies is unlikely because of a lack of willingness from or inability of the key states. Recent reports about a new Isis court in Iraq, which focuses solely on terrorism, raise serious human rights concerns over the rights and treatment of the accused and continued impunity for international crimes.

The Yazidi genocide demands an international law response in an international court. An appropriate legal solution is the exercise of jurisdiction by the ICC over foreign fighters from states party to the Rome Statute of International Criminal Court. This would include, according to best estimates, up to 15,000 fighters from at least 34 states.

The ICC has an opportunity to fulfil its core mandate to prosecute individuals for genocide and crimes against humanity and end impunity. There is a legal basis for the court to act, complementary to legal actions carried out by individual states. It should do so urgently. Otherwise, the ICC is in danger of appearing to turn its back on the mountain of death.

- Read the original article [here](#).

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A Long Wait for Justice in Cambodia

VOA News, by Leakhena Sreng



Journalists take photographs of a television screen showing the trial of Kaing Guek Eav, alias Duch, former chief of the S-21 prison, at the Extraordinary Chambers in the Courts of Cambodia (ECCC) on the outskirts of Phnom Penh, 3 February 2012.

The exhibition “I Want Justice!” at the Holocaust Museum examines the history of efforts to hold perpetrators of genocide accountable through court proceedings. “We want people to know the truth of what happened during the Khmer Rouge’s violent reign and to witness the long-delayed search for justice for the victims now,” said Greg Naranjo, the museum’s special exhibition developer and curator of the Cambodia display when it opened in Washington.

The exhibition features interactive video and audio elements and deals with the United Nations tribunal and other ways Cambodians have tried to heal their trauma. And, although it focuses on the trials in Cambodia of surviving leaders of the Khmer Rouge regime, it looks at the [Nuremburg trials of Nazi leaders](#) in the aftermath of World War II and the [International Criminal Court in The Hague](#), which was established in 2002.

The Tribunal

After [lengthy negotiations with the international community](#), Cambodia and the U.N. established the [Extraordinary Chambers in the Courts of Cambodia \(ECCC\)](#). It is a special Cambodian court that receives international assistance through the United Nations Assistance to the Khmer Rouge Trials (UNAKRT) and is usually referred to as the tribunal. In 2007, five top Khmer Rouge figures were

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arrested and charged with war crimes against humanity, but court proceedings have moved very slowly amid disagreements between the Cambodian and international judges and prosecutors that comprise this unique, hybrid court.

The current Hun Sen government, which includes former, midlevel Khmer Rouge leaders who defected, has been accused of interfering in the court in order to limit the number of defendants. As of 2017, \$300 million has been spent and three suspects have been convicted, while two died in custody before being sentenced.



People line up to enter the Extraordinary Chambers in the Courts of Cambodia (ECCC), in the outskirts of Phnom Penh, Oct. 31, 2013. Khmer Rouge war crimes tribunal is hearing closing arguments in the court's biggest case after lengthy hearings.

Court proceedings continue. Cameron Hudson, the director of the museums' Simon Skjodt Center for the Prevention of Genocide, said the exhibit on justice for Khmer Rouge victims and other genocide survivors is important because the best ways of seeking redress for such events are still being debated. "There's no question that international justice is a very expensive proposition. And that the academic research is still rather thin on the degree to which those high-level trials truly help to break the cycle of violence, versus a more grassroots, traditional justice system that tries many more lower-level commanders," he said.

Michael Abramowitz, who was the director of the U.S. Holocaust Museum's Levine Institute for Holocaust Education until earlier this year, said the Khmer Rouge tribunal's achievement was mixed, yet largely positive. "It seems like a lot of money to spend for a relatively small payoff. On the other



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hand, it does seem that the people who are most responsible, who are still living, were tried, and I also think that, you know, Cambodians ... now have a record in court,” he said.



Sok Teng, 73, waits with other survivors and relatives of victims of the Khmer Rouge regime to enter the Extraordinary Chambers in the Courts of Cambodia (ECCC) to attend the delivery of verdict in the trial of former Khmer Rouge head of state Khieu Samphan and former Khmer Rouge leader "Brother Number Two" Nuon Chea on the outskirts of Phnom Penh, 7 August 2014.

The fact that the Khmer Rouge suspects were jailed after so many years also offers a warning to all those in power, he added. “It’s very important to make the point that there is no statute of limitation on crimes against humanity, or on genocide,” Abramovitz said. “The hope would be that people ... would think again and say, ‘I am going to end up in court if I pursue this thinking.’”

And So It Begins... Social Media Evidence In An ICC Arrest Warrant

***Opinio Juris**, by Emma Irving, Assistant Professor of Public International Law at the Grotius Centre for International Legal Studies of Leiden University*

The ICC’s most recent arrest warrant, [issued](#) on the 15th August 2017, should have us all talking for one important reason: it is the first ICC arrest warrant to be based entirely on evidence collected from social media. This was a move that was bound to come, and it aligns the ICC with the realities of many of today’s conflicts.

The ICC arrest warrant in question was issued against Mahmoud Mustafa Busayf Al-Werfalli, in the context of the Libya situation. Mr Al-Werfalli, an alleged commander within the Al-Saiqa Brigade, is accused of having

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committed or ordered 33 murders in Benghazi or surrounding areas in June 2016 and July 2017. The crimes are alleged to have taken place during the Al-Saiqa Brigade's participation in Operation Dignity, an operation which began in May 2014 as a coalition effort to fight terrorist groups in Benghazi.

The charge of murder as a war crime under Article 8(2)(c)(i) of the Rome Statute is based on seven separate incidents captured in seven separate videos. The Pre-Trial Chamber decision describes the events in these videos, some of which show Mr Al-Werfalli shooting individuals himself, and some of which show him ordering others to commit executions:

- Mr Al-Werfalli, wearing camouflage trousers and a black t-shirt with the logo of the Al-Saiqa Brigade, and carrying a weapon, is seen in a video footage shooting with his left hand three male figures in the head. (§12)
- Mr Al-Werfalli is seen speaking into the camera and then raising his left hand in the air and sweeping it down towards the ground in a manner that suggests that he is ordering the two men to proceed with the execution. The men shoot the persons kneeling, who fall on the ground. (§16)
- The first of the seven videos is stated to have been posted to Facebook, while the other six are simply described as having been posted to social media. It is not clear whether the videos were posted by the Al-Saiqa Brigade itself or by a third party. At least some of the material appears to have been posted by the group itself, as early in the decision the Pre-Trial Chamber notes that the evidence supporting the application for the arrest warrant comes from 'social media posts by the Media Centre of the Al-Saiqa Brigade'. (§3)

That the ICC has turned to social media evidence (also referred to as open-source evidence) is significant. In many of today's conflicts we see large volumes of video, photo, and text material being posted to social media every day. Sometimes this material is posted by onlookers who take out their smartphones to record an event, but very often the material is posted by armed groups and perpetrators themselves. In this regard one need look no further than the propaganda uploaded by ISIS, and the atrocities that it often depicted. This is a mine of potential evidence, and some domestic jurisdictions have already started taking advantage. In Sweden, a court [recently convicted](#) a Syrian national of war crimes, based in part on evidence posted to Facebook. It appears that the Swedish court used Facebook posts to establish a timeline proving that it was not possible for a prisoner to have been executed following any kind of legal proceeding. In the absence of a trial, the execution was deemed a war crime and the Syrian national was sentenced to life in prison.

As the ICC steps into this new era of open source evidence, a few questions arise from the decision to issue an arrest warrant for Al-Werfalli. First, open source evidence is notoriously susceptible to problems of verifiability, which naturally affects its reliability in any kind of criminal proceeding. It can be hard to concretely establish the time, date, and location of the evidence, and to prove that it hasn't been tampered with. These problems have led organisations, such as the International Bar Association, to develop [apps](#) that aim to improve the verifiability of open source material. In its decision, the Pre-Trial Chamber offers no indication of the methods used to verify the videos being relied upon, or who they were verified by. While the arrest warrant decision is clear as to the dates when the videos were uploaded to social media, there is uncertainty in relation to one of the videos as to where the upload took place, which hints at issues of verifiability.



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The second question is forward looking, and concerns whether the approach to open source evidence will change depending on the stage of proceedings. The standard of proof for the issuance of an arrest warrant is 'reasonable grounds to believe' (Article 58(1) of the Rome Statute). One might assume that the approach to open source evidence would not be stricter when it came to initiating an investigation ('reasonable basis to believe', Article 53(1)(a)) but the situation may be different as regards the higher standards of



'substantial grounds to believe' (confirmation of charges, Article 61(5)) and 'beyond reasonable doubt' (conviction, Article 66(3)). Will it be the case that the higher the burden, the less weight is given to open source evidence? The decision on the arrest warrant was not the place to answer such questions, but they will need to be addressed in future.

The arrest warrant against Mr Al-Werfalli is the latest indication from the ICC that it is keeping up with developments relating to conflict, crime, and communication technology. The OTP noted in its [Strategic Plan for 2016-18](#) that technology has led to a rapidly changing environment in which witnesses, victims, and perpetrators have access to smartphones and the internet. The Court has hired cyber investigators to conduct online investigations. Perhaps the arrest warrant from the 15th August is the outcome of these efforts. However, much work remains to be done to carve a way forward with regards to open source/social media evidence. Practitioners and academics are, in many ways, entering unknown territory. The approach taken to this type of evidence will prove crucial for any future proceedings in conflicts such as Syria and Yemen, where open source material abounds. The warrant for Mr Al-Werfalli is just the beginning of what will be a long, and likely complex, relationship between open source evidence and international criminal justice.

Iraq asks UN to collect evidence to prosecute Daesh

[Associated Press](#)

Iraq is asking the U.N. Security Council for assistance in collecting evidence to prosecute extremists from the Islamic State group for possible crimes against humanity. Iraqi Foreign Minister Ibrahim al-Jaafari said in a letter to U.N. Secretary-General Antonio Guterres circulated Wednesday that his government and the United Kingdom are working on a draft Security Council resolution seeking assistance.

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It was sent more than five months after human rights lawyer Amal Clooney urged Iraqi Prime Minister Haider al-Abadi to send a letter to the council so it can vote to set up an investigation into crimes by IS militants in Iraq. Clooney represents victims of IS rapes and kidnappings from Iraq's Yazidi community. The lawyer, who is the wife of actor George Clooney, said in early March that the world's nations must not let IS "get away with genocide."

Amal Clooney on Wednesday welcomed al-Jaafari's letter as an important first step to bring IS members to justice. But she cautioned that it will only be meaningful if the Security Council acts promptly so evidence can be collected of crimes by IS, which is also known as ISIS and by the Arab acronym

Daesh. "Yazidis and other ISIS victims want justice in a court of law, and they deserve nothing less,"

Clooney said in a statement. "I hope that the Iraqi government's letter will mark the beginning of the end of impunity for genocide and other crimes that ISIS is committing in Iraq and around the world."

Britain's deputy U.N. ambassador, Jonathan Allen, said the United Kingdom is delighted the Iraqi government's letter makes clear it wants accountability. He noted that Iraq, Britain and Belgium launched a campaign last September to prosecute IS crimes. Allen said London will work to put forward a resolution to achieve accountability, "leaving no hiding place for Daesh anywhere."

Russian Ambassador Vassily Nebenzia told reporters: "Of course we'll support it — (but) we'll have to see the resolution." Britain's U.N. ambassador, Matthew Rycroft, said in March that the aim of a Security Council resolution would be to assist Iraq "with the difficult but crucial challenge of preserving the huge amount of evidence of Daesh crimes committed on Iraqi territory."

In the letter, Al-Jaafari praised Iraq's armed forces for recently liberating the city of Mosul from "the Daesh terrorist organization" and for "brilliant military victories with the support and cooperation of the international coalition." "The crimes committed by the Daesh terrorist organization against civilians and destruction of infrastructure and archaeological sites in Iraq are crimes against



Iraqi Foreign Minister Ibrahim al-Jaafari speaks during a joint press conference with his Egyptian counterpart in Baghdad, Iraq. Iraq is asking the U.N. Security Council for assistance in collecting evidence to prosecute extremists from the Islamic State group for possible crimes against humanity. (AP Photo/Hadi Mizban, File)

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humanity, which makes it important to bring its perpetrators from Daesh terrorist gangs to justice, in accordance (with) the Iraqi law,” he said. In this light, al-Jaafari said, “we request assistance of the international community to get benefited from international expertise to criminalize Daesh terrorist entity.” The foreign minister underlined Iraq’s “sovereignty and jurisdiction” in both negotiating and implementing any Security Council resolution.

A council diplomat, speaking on condition of anonymity because he was not authorized to speak publicly, said Wednesday that work on a resolution was just getting started.

In March, Clooney said it was initially Iraq’s idea to involve the United Nations and she told the Iraqi prime minister that sending a letter “would silence those who doubt your commitment to bring Daesh to justice.” If no letter is forthcoming, she said, the Security Council could act without Iraq’s consent or it could refer the extremist group to the International Criminal Court, or the General Assembly could establish “an accountability mechanism” as it did for crimes in Syria in December. The secretary-general could also launch an investigation, she said.

Nadia Murad, a Yazidi survivor and U.N. goodwill ambassador, said Wednesday she was grateful to Iraq for taking a first step toward justice. “Victims deserve a meaningful accountability mechanism in which they trust and I hope the Security Council resolution will reflect that,” she said in a statement.

Call for Papers: Hybrid Justice: Building Resilience After Conflict

Edited by Kirsten Ainley and Mark Kersten



One of the most dramatic shifts in international politics in the last thirty years has been the increase in the use of international or internationalised criminal justice mechanisms in post-conflict states. Such mechanisms are intended not just to provide accountability, but also to underwrite stable and resilient peace. Early mechanisms included criminal tribunals established under the auspices of the UN Security Council for the former Yugoslavia and Rwanda, and ‘hybrid’ criminal mechanisms for East Timor, Sierra Leone, Iraq, Cambodia, Bosnia and Lebanon. These hybrids featured varying combinations of international and domestic staff, operative law, structure, financing and rules of procedure. The establishment of the International Criminal Court (ICC) was expected to make hybrids redundant, but we have seen a recent resurgence of hybrids – in Senegal, Kosovo, Central African

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Republic and South Sudan; and proposed for Colombia, DRC, Syria, Sri Lanka, Ukraine and ISIS. Yet, because hybrids were thought to be a relic of pre-ICC justice, there has been little academic research on their impact. In addition, there is demand from practitioners currently in the process of establishing hybrids for rigorous comparative work on past tribunals to contribute to our understanding of how to design such institutions to be resilient in themselves and to contribute to resilient societies.

The Call is for articles to be published as a special issue of a leading international law journal, as part of the Hybrid Justice project. Articles will compare and evaluate the internal resilience of hybrids, and their impact on external resilience. Internal resilience is understood as the extent to which the design of hybrid mechanisms enables them to function robustly and with legitimacy in the face of external pressures from donors, host states, actors which oppose the mechanism and other interested parties. External resilience is the extent to which hybrid mechanisms enable post-conflict states and societies to heal, reconcile, strengthen and address the root causes of prior conflict. Indicators of, and pathways to, internal and external resilience are contested in the current literature, and articles in this collection are likely to take different positions on what counts as resilience and the extent to which hybrids exhibit or contribute to it. Abstracts are welcome for articles focused on any of the hybrid mechanisms, but all papers must be comparative in some way rather than focused on a single mechanism.

Abstracts are also welcome for articles considering broader issues such as the reasons for the recent recurrence of hybrids; the relationship of hybrids to other transitional justice mechanisms, including the ICC; and the robustness of the evidence available on the impact of hybrids as a contribution to the wider 'transitional justice impact' literature. Authors are likely to come from a variety of disciplinary backgrounds. To ensure a consistent and rigorous collection, all authors will be invited to receive feedback on their work at a workshop in London on 4th and 5th January 2018. Limited funding is available for travel and accommodation.

Timing:

- By 30th Sept 2017: abstracts to be submitted to k.a.ainley@lse.ac.uk and mark.s.kersten@gmail.com
- By 22nd Dec 2017: full draft papers to be circulated
- 4-5th Jan 2018: workshop to be held in London
- End Feb 2018: final copy to be submitted, to be sent to peer review
- July 2018: publication of Special Issue

Please circulate this call among your networks, and contact k.a.ainley@lse.ac.uk and mark.s.kersten@gmail.com with any questions.



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New Paper: Offences against the administration of justice & fair trial considerations before the ICC

International Bar Association ICC & ICL Programme

‘Offences against the administration of justice and fair trial considerations before the International Criminal Court’ is the latest Discussion Paper from the IBA’s ICC & ICL Programme. This Discussion Paper seeks to provide the basis for a policy-level discussion on how the International Criminal Court (ICC) implements its jurisdiction over ‘offences against the administration of justice’, as defined in Article 70 of the Rome Statute.

Article 70 criminalises behaviour that seriously undermines proceedings, including witness interference in the form of intimidation, corruption and threats. As such, the ability to investigate and prosecute offenses against the administration of justice is an important provision to protect the integrity of ICC trials.

Taking a comparative perspective, the Discussion Paper examines the legal framework for Article 70 proceedings at the ICC, and highlights procedural issues that have an impact on the fairness of proceedings. It examines in detail two Article 70 investigations arising out of ICC trial proceedings, in the *Bemba* and *Ntaganda* cases, with attention to the role of the prosecution in the Article 70 investigation, and the management of Article 70 investigations by the pre-trial and trial chambers. The Discussion Paper also looks at how the use of *ex parte* proceedings and access to the communications of the accused impact the rights of the accused.

The Discussion Paper explores future considerations for Article 70 proceedings through the lens of fair trials, and provides recommendations for strengthening current practices.

- Click [here](#) to download ‘Offences against the administration of justice and fair trial considerations before the International Criminal Court’



New Open Access Publications

Explaining Inhumanity: The Use of Crime-Definition Experts at International Criminal Courts

By Caroline Davidson, Willamette University - College of Law

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Abstract: International criminal courts must not only decide the guilt or innocence of defendants in immensely serious cases, but also make good law in the process. To help them do so, these courts have turned to experts. This Article identifies a type of expert witness that, thus far, has escaped scholarly attention: the crime-definition expert. Crime-definition experts have provided expert reports and testimony to international criminal courts on the meaning of the very crimes with which defendants are charged, including genocide, forced marriage, and recruitment and use of child soldiers. This Article critically evaluates the risks associated with using crime-definition experts in international criminal trials. Ultimately, it concludes that crime-definition experts may help tribunals achieve the various aims of international criminal justice, but have the potential to impair defendants' rights and impede the tribunals' ability to advance expressive and restorative justice aims. It advocates judicious use, if any, of these experts and proposes measures to reap the most benefit from crime-definition experts while minimizing the risks inherent in their use.

- Read the full paper on the [SSRN website](#)

Closing the 'Impunity Gap' and the Role of State Support for the ICC

By Makau W. Mutua, *Suny Buffalo Law School*

Abstract: This paper argues that the ICC faces serious challenges in Africa. But there is no doubt that it is a much needed institution to help break the cycle of impunity in a number of states. That is why it must receive the support of the international community. What is required is a holistic understanding of the root causes of the culture of impunity and the seemingly intractable ethnic, social, and political problems. Such analysis would put stakeholders in a better position to decide the most effective and practical areas of intervention and partnership with local actors such as civil society. The objective is to capacitate local actors and create an environment in which the ICC's work can help reduce impunity and foster a culture of accountability and the rule of law.

- Read the full paper on the [SSRN website](#)

International Nuremberg Principles Academy Forum Invitation

Dear Friends of the Nuremberg Academy,

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We would like to invite you to this year's [Nuremberg Forum](#) which will take place on 20 and 21 October 2017. Please find the invitation enclosed.



Invitation

The International Nuremberg Principles Academy cordially invites you to attend the 2017 Nuremberg Forum

10 years after the Nuremberg Declaration on Peace and Justice “The Fight against Impunity at a Crossroad”

20–21 October 2017
at the historic Courtroom 600 of the Nuremberg Palace of Justice
Bärenschanzstraße 72, 90429 Nuremberg, Germany

The Forum will feature eight panels focusing on the three paths that were elements of the Nuremberg Declaration on Peace and Justice: ending impunity with a victim-centered approach; the importance of legitimate processes of reconciliation; and development at the service of peace and justice.

For more information and registration visit our website:
www.nurembergacademy.org/nurembergforum



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The Use of Force under International Law

Live Stream on Monday, 11 September 2017 - 11:30 am - 12:30 pm ET



The United States pursues a range of policy options in serving its national interests, from diplomacy to sanctions and other coercive measures to the use of military force. At various times, such measures have been undertaken unilaterally, or pursuant to Security Council authorization, or in accordance with obligations arising under international security agreements. Since entering office, the Trump Administration has continued military operations conducted by previous administrations against ISIS and other non-state actors, launched a unilateral missile strike against a Syrian

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government target in response to the use of chemical weapons against Syrian civilians, and contemplated possible military actions in response to nuclear weapons tests in North Korea.

This live online briefing, the eighth in the Society's series on "International Law and the Trump Administration," will feature former senior U.S. officials from both Republican and Democratic administrations who were responsible for formulating policy and advising the Executive Branch on issues involving the use of force and the law of armed conflict. They will discuss the international legal principles that apply to the permissible use of force by nation states and the extent to which those principles serve as an effective constraint on aggression, and will examine the interplay between international law, domestic legislation, and Executive Branch policies that US officials consider in determining whether a given exercise of armed force is legally permissible.

Speakers


Jack Goldsmith, Harvard Law School, former Assistant Attorney General, U.S. Department of Justice and former special counsel, Office of the General Counsel, U.S. Department of Defense

Oona Hathaway, Yale Law School, former special counsel, Office of the General Counsel for National Security Law, U.S. Department of Defense

Laura Dickinson (moderator), George Washington University School of Law, former senior policy adviser, U.S. Department of State

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News August 2017

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

30 August

[UK calls for UN meeting on Myanmar violence](#)

(Aljazeera)

The UK on Tuesday urged the UN Security Council to convene to discuss reports of mass civilian casualties after raids by Myanmar security forces against Rohingya fighters. "UK requests #UNSC meeting on situation in Burma tomorrow. Need to address long-term issues in #Rakhine, urge restraint by all parties," Matthew Rycroft, UK ambassador to the UN, wrote on Twitter...

[Day of the Disappeared: remembering victims of the Bosnian war – in pictures](#)

(The Guardian)

Families are still searching for 12,000 missing relatives from the 1990s war in the western Balkans. Photographer Armin Smailovic followed one man, the only survivor of a 1992 massacre in which he lost his mother, brothers and sister...

[Kosovo Remands Serb in Custody over War Crimes](#)

(Balkan Transitional Justice)

A Kosovo court remanded 74-year-old Bogdan Mitrovic in custody for 30 days after he was charged with committing war crimes against civilians during the conflict in 1999. The Basic Court in Prizren on Wednesday issued a 30-day detention order for Bogdan Mitrovic, whose arrest earlier this week sparked an angry reaction from

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Belgrade. Mitrovic, a father of six, is suspected of committing war crimes against the civilian population and serious violations of the laws and customs of non-international armed conflicts in the Suhareka/Suva Reka area of Kosovo in the spring of 1999...

29 August

[Key U.S. Foreign Policy Positions—including Ambassador for War Crimes—Saved from Getting Axed](#)

(Just Security)

... Last night, a letter from Secretary of State Rex W. Tillerson to Senator Bob Corker, Chair of the Senate Committee on Foreign Relations, was posted setting forth certain structural changes in this arena. Of special note, the following positions are retained:

- Ambassador-at-Large and Coordinator for Counterterrorism
- Ambassador-at-Large for Global Criminal Justice
- Ambassador-at-Large to Monitor and Combat Trafficking in Persons.

Although these positions will be retained within the Under Secretariat for Civilian Security, Democracy, and Human Rights (J) and will continue to be Senate confirmed, the letter does not expressly indicate whether the Offices themselves (and their associated budgets) will remain intact...

[South America rights groups file war crimes suits against former Sri Lanka army general](#)

(Jurist)

Human rights groups on Monday filed suits against Jagath Jayasuriya, a former Sri Lanka army general, for alleged war crimes and human rights violations he committed during the 2009 civil war in Sri Lanka. The suits are based on his role as a commander in the Sri Lanka military during the final phase of the government's conflict against the Liberation Tigers of Tamil Eelam (LTTE)...

[ICC: Support Victims in Choosing Counsel](#)

(HRW opinion)

The International Criminal Court (ICC) should prioritize victims' views and wishes when it comes to choosing lawyers to represent them in the courtroom, Human Rights Watch said in a report released today. The 60-page report, "Who Will

Stand for Us? Victims' Legal Representation at the ICC in the Ongwen Case and Beyond," compares the way victims' lawyers were selected in one ongoing trial to broader trends in court practice...

28 August

[An Update of the Israel-Palestine-International Criminal Court Timeline](#)

(Just Security)

A lot has happened before the International Criminal Court since we last reported on the Palestine and related situations. The timeline below picks up where my last timeline of relevant events left off. At that time, the Prosecutor had opened a preliminary examination into the Comoros referral based upon events on the Mavi Marmara, which was part of the Gaza freedom flotilla...

25 August

[The Al-Mahdi Reparations Order at the ICC: A Step towards Justice for Victims of Crimes against Cultural Heritage](#)

(Opinio Juris)

On August 17, 2017, the International Criminal Court (ICC) handed down its Order on Reparations in the case of The Prosecutor v. Ahmad Al Faqi Al Mahdi. Al Mahdi was previously sentenced to nine years' imprisonment, following a Trial Chamber's decision on September 27, 2016. He was convicted as a co-perpetrator for the war crime of attacking protected objects under articles 8(2)(e)(iv) and 25(3)(a) of the Rome Statute. The protected objects include ten buildings of religious and historical character, nine of which are UNESCO World Heritage sites in Timbuktu, Mali. The Court's Order on Reparations marks the first time the ICC has awarded reparations for victims of crimes against cultural heritage...

[Timbuktu destruction: landmark ruling awards millions to Malians](#)

(The Conversation)

The International Criminal Court (ICC) has ordered Malian radical Ahmad al-Faqi al-Mahdi to pay €2.7m in reparations for his role in the destruction of the UNESCO world heritage site in Timbuktu in 2012. This is the first time the court has demanded reparations for the destruction of cultural property. The ruling sends a strong message that

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perpetrators who target cultural heritage can be held to account. Al Mahdi was one of the leading perpetrators in the Islamic militant group Ansar Dine. The group attacked Timbuktu in 2012, taking control of the area...

24 August

[International court must clear up vexed issue of Bashir's immunity](#)

(Business Live)

In a judgment in July, the Pre-trial Chamber of the International Criminal Court (ICC) confronted the vexed legal question of immunity for heads of state who are alleged to have committed international crimes. It did so in a case involving SA's failure to arrest President Omar al-Bashir of Sudan when he attended the AU heads of government summit meeting in Johannesburg in June 2015. While Judge Marc Perrin de Brichambaut wrote a separate opinion, the three-member chamber reached the unanimous conclusion that SA had failed to comply with the request that had been issued by the ICC to arrest Bashir for serious crimes allegedly committed in the Darfur region of Sudan...

23 August

[UN rights experts urge Iraq to ensure justice for Islamic State sexual abuse victims](#)

(Jurist)

The UN Assistance Mission to Iraq (UNAMI) published a report on Tuesday urging the Iraqi government to ensure the rights of those individuals sexually victimized by Islamic State (IS) forces. According to the report, thousands of women and girls have been subjected to physical and mental abuses as result of sexual assault, abduction, slavery, displacement, forced religion changes, and other forms of inhumane treatment...

[The ICC's New Libya Case: Extraterritorial Evidence for an Extraterritorial Court](#)

(Just Security)

... There has been considerable commentary about the ICC's reliance on social media to bring this case. All of the executions were video-recorded and posted either to Facebook or other social media sites, according to the arrest warrant. The last case brought by the Office of the Prosecutor, against Ahmad Al Faqi Al Mahdi in Mali for the war

crime of intentionally directing attacks against religious and historic buildings, was also heavily reliant on video evidence. In this respect, these cases show both the challenges and opportunities of ICC investigations: The Court depends on state cooperation to access information, but state control over information is declining...

[Mass Grave Found Near Koricanske Stijene, Bosnia](#)

(Balkan Transitional Justice)

Mujo Begic, chief of the regional office of the Institute for the Missing Persons of BiH in northwest Bosnian town of Bihac, said a mass grave discovered on Wednesday containing a still unknown number of bodies may be linked to the 1992 killings in the area... In August 1992, members of the Interventions Squad of the Prijedor police shot about 200 men at Koricanske Stijene... So far, 11 former policemen from Prijedor have been sentenced for the murders at Koricanske Stijene. One of them, namely Darko Mrdja, was sentenced by the UN court in the Hague, while the others were sentenced before the Court of Bosnia and Herzegovina...

22 August

[UN: Afghanistan village attacks 'may amount to war crimes'](#)

(Jurist)

The UN Assistance Mission in Afghanistan (UNAMA) released a special report on Sunday detailing the human rights violations committed during attacks on the Mirza Olang village earlier this month. During the three-day event, Taliban and local Islamic State (IS) fighters reportedly killed [press release] at least 36 people in the predominantly Shi'ite Muslim village. Those killed included both civilians and members of a pro-government militia who were unarmed prior to execution...

[Stanisic, Simatovic Retrial Resumes Before Tribunal](#)

(Balkan Transitional Justice)

The retrial of two former leaders of the SDB, Jovica Stanisic and Franko Simatovic alias Frenki, charged with war crimes in Croatia and Bosnia and Herzegovina, resumes before the Mechanism for International Criminal Tribunals in The Hague on



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Tuesday. Following their one-month summer break, the judges will hear testimony from a protected prosecution witness who lives in a trans-oceanic country, via video link in the evening...

18 August

[How the trial of Dominic Ongwen has shaped attitudes toward International Criminal Justice in Uganda](#)

(Justice Hub)

Uganda is currently the focus of two international criminal trials: that of Thomas Kwoyelo before the International Crimes Division (ICD) in Uganda, and Dominic Ongwen before the International Criminal Court (ICC) in the Netherlands. Both Kwoyelo and Ongwen are charged with committing war crimes and crimes against humanity in northern Uganda while in the service of the Lord's Resistance Army (LRA). This has inevitably stirred debate in Uganda regarding which of the two courts is more effective, and shaped attitudes towards international criminal justice in the country...

Asked which of the two ways of bringing the LRA commanders to trial they preferred, and which one they thought was more effective, those questioned presented varied responses...

[This Secret Police Archive Holds Clues to Terrible Crimes \[Guatemala\]](#)

(National Geographic)

... These documents hold the secrets of Guatemala's civil war, which began after the United States engineered a military coup in 1954 and lasted for more than 35 years. During the conflict, hundreds of thousands of Guatemalans were abducted, tortured, and assassinated. While the National Police, closely allied with the military, were suspected of carrying out many of these kidnappings and killings, officials had long denied the existence of any records of police activities...

[Libya: Khalifa Haftar ally Mahmoud al-Werfalli arrested](#)

(Aljazeera)

A senior Libyan military commander allied with Khalifa Haftar and suspected of involvement in the deaths of 33 people in eastern Benghazi has been arrested. The general command of the Libyan National Army (LNA) - the force that controls most of eastern Libya, including key oil ports - said on

Thursday that Mahmoud al-Werfalli was being investigated by a military prosecutor. The arrest comes after the International Criminal Court (ICC) issued an arrest warrant for Werfalli earlier this week, accusing him of "murder as a war crime in the context of the non-international armed conflict in Libya"...

17 August

[Reparations for victims at the International Criminal Court: a new way forward?](#)

(IJHR)

Reparations at the International Criminal Court (ICC) raise victims' expectations that they would have an avenue of redress in the face of domestic impunity. This article examines the purpose of reparations at the ICC, which notably move away from the international-law state-centric modes of liability for reparations to more private-law individual liability and even developmental or subsidiary responsibility when provided by the Trust Fund for Victims...

[‘The Hitman’s Bodyguard’ review: Ryan Reynolds, Samuel L. Jackson are right on target](#)

(Seattle Times)

... Its title is its plot. A down-on-his-luck professional protection agent (Ryan Reynolds) is assigned to deliver a killer (Samuel L. Jackson) to the International Criminal Court at The Hague to be a witness against a mass-murdering Slavic dictator (Gary Oldman, not trying very hard). Standard stuff. But it's got more humor and zest than most movies of its kind. And that makes it pretty darn enjoyable...

[The Kosovo Specialist Chambers’ Rules of Procedure and Evidence](#)

(EJIL)

The Kosovo Specialist Chambers (KSC) and the Specialist Prosecutor's Office (SPO) are the latest addition to a multi-layered and broad spectrum of international institutions dedicated to the investigation and prosecution of international crimes. In March 2017, the Judges of the KSC adopted the Rules of Procedure and Evidence (RPE), which are now finally available on the Tribunal's website. In the following, I will provide a first analysis of the RPE and evaluate them against



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existing procedural laws of International Criminal Tribunals (ICTs)...

15 August

[Situation in Libya: ICC Pre-Trial Chamber I issues a warrant of arrest for Mahmoud Mustafa Busayf AL-WERFALLI for war crimes](#)

(ICC)

Today, 15 August 2017, Pre-Trial Chamber I of the International Criminal Court issued a warrant of arrest for Mahmoud Mustafa Busayf AL-WERFALLI ("Mr Al-Werfalli") allegedly responsible for murder as a war crime in the context of the non-international armed conflict in Libya. Mr Al-Werfalli is alleged to have directly committed and to have ordered the commission of murder as a war crime in the context of seven incidents, involving 33 persons, which took place from on or before 3 June 2016 until on or about 17 July 2017 in Benghazi or surrounding areas, in Libya...

[Never again, again: The Yazidi Genocide](#)

(IntLawGrrls)

On 15 August 2014, ISIS fighters ordered the Yazidis of Kocho to assemble in the village school. The women and younger children were forced upstairs while, on the ground floor, ISIS fighters divided the men and older boys in groups before leading them away. This moment, three years ago today, marked the first step in the destruction of the last intact Yazidi community in Sinjar, northern Iraq...

14 August

[Victims of the Russo-Georgian War want to see high-level perpetrators punished](#)

(Justice Hub)

The ICC Prosecutor's investigation into the Russo-Georgian War of 2008 took a long time coming, but represents a welcome change of focus for The Hague-base court. Nika Jeiranashvili of the Open Society Georgia Foundation explains why the ICC's investigation into Georgian situation is special. "It represents the first time that the ICC has stepped outside Africa or that it will be the first time that the court will deal with an international conflict," he told Justice Hub's Janet Anderson in The Hague in a recent interview...

[ICC chief prosecutor to inspect Colombia's progress in military war crime probes](#)

(Colombia Reports)

The chief prosecutor of the International Criminal Court (ICC) will visit Colombia in September to hear about progress made in war crime investigations against the country's military chief and dozens of other top commanders. The visit is the second time the ICC explicitly puts pressure on the investigation of top military commanders accused of being responsible for the extrajudicial execution of civilians...

11 August

[An Analysis of the ICC Office of the Prosecutor's Policy Paper on Case Selection and Prioritization from the Perspective of Business and Human Rights](#)

(JICJ)

The article evaluates the significance of the policy paper for the field of business and human rights. It does so by pointing to the current deficiencies of both international criminal law and international human rights law regarding business accountability, and by assessing whether, and if so how, the new policy paper can tackle those deficiencies. It also explores other areas of business activity the policy paper could have covered but did not. It concludes that, despite its limitations, the policy paper holds considerable potential from a business and human rights perspective...

[Kosovo Albanian Detained for War Crimes Against Albanians](#)

(Balkan Transitional Justice)

A court in the town of Prizren on Thursday remanded Agim Sahitaj in custody for a month over claims that he committed war crimes against the Kosovo Albanian civilian population. Kosovo's Special Prosecution alleged that Sahitaj, who was uniformed and armed, acted with Serbian forces in April 1999 as they killed, wounded, beat and harassed Kosovo Albanian civilians, looted their possessions and forcibly expelled them from their homes...

10 August

[A Bosnian War Criminal's Quest for Forgiveness](#)

(Balkan Transitional Justice)

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Esad Landzo is the troubled man at the centre of Danish director Lars Feldballe-Petersen's new film 'The Unforgiven' - a documentary about repentance, forgiveness and the desire to atone for past sins. Landzo, who served ten years of a 15-year sentence for war crimes, told BIRN that he took part in the film in order to apologise for what he did to other people during the war...

9 August

[Frustration Over a War and Its Crimes](#)

(LatinAmerican Post)

A United Nation's commission probing Syria rights abuses has gathered enough evidence to convict President Bashar al-Assad of war crimes, says a prominent member of the commission, Carla del Ponte. She added that with no international court or prosecutor tasked with the Syrian war crimes cases, justice would remain elusive...

[UN calls on Nepal to investigate civil war case of gang-rape and torture by soldiers](#)

(The Guardian)

The UN human rights committee has urged Nepal to investigate the gang-rape of a woman during the country's civil war in a landmark decision that is the first to deal with an individual case of sexual violence during the conflict. The UNHRC's decision refers to the case of a woman known as Purna Maya, who was raped in 2004 by Nepalese soldiers. Maya, whose name has been changed to protect her, suffered serious injuries during the attack, including a severe haemorrhage of the uterus, which required its removal by surgery...

7 August

[Myanmar government inquiry finds no crimes against humanity in Rakhine violence](#)

(Jurist)

An inquiry conducted by the Myanmar government has found were committed during violent clashes in Rakhine state last year, Vice President Myint Swe said Sunday. Speaking to reporters at the release of the Rakhine Investigative Commission's final report, Swe denied allegations of ethnic cleansing and gang rapes. He did concede that some crimes may have occurred, but attributed them to individual members of security forces. The Myanmar government's commission has faced criticism from rights groups and international

actors for a lack of transparency, and its credibility has been called into question...

[Ailing Defendants Cause Headaches for Hague Tribunal](#)

(Balkan Transitional Justice)

The UN's Mechanism for International Criminal Tribunals, MICT in The Hague adopted an unconventional solution last month for probably the most persistent problem in the past two decades of the court's existence. Its solution was intended to address the issue of a defendant who is deemed fit to stand trial but whose illness significantly slows down and interrupts the course of justice. The MICT judges created a legal precedent when they allowed the retrial of former Serbian State Security Service chief Jovica Stanisic to continue in the absence of the accused, who is chronically ill. According to the trial chamber's decision, Stanisic, aged 65, will follow the proceedings via webcast from his home in Belgrade when the court reconvenes from its summer recess in mid-August. Stanisic is charged with committing for crimes against humanity in Croatia and Bosnia and Herzegovina during the conflicts from 1991 to 1995...

6 August

[Defense Perspectives on International Criminal Justice](#)

(International Criminal Law Bureau)

Colleen Rohan, member of 9 Bedford Row International and founding member of the International Criminal Law Bureau has just edited and produced a new book: Defense Perspectives on International Criminal Justice, published by Cambridge University Press... Defense Perspectives on International Criminal Justice is a unique law book as it is one of the only—if not the only—comprehensive discussions of the defence function in the various international courts and tribunals written primarily by experienced, practicing attorneys who have defended individuals in such courts and are in a position to provide real insight into the administration of international criminal justice, from the defence perspective, based on their experiences...

[Carla Del Ponte: War crimes expert quits UN Syria inquiry](#)

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(BBC News)

Former war crimes prosecutor Carla Del Ponte has announced she is quitting a United Nations commission investigating human rights abuses in Syria because it "does absolutely nothing". She has served on the UN Commission of Inquiry on Syria for nearly five years... Later, she told a panel discussion at the Locarno Film Festival: "I am quitting this commission, which is not backed by any political will. I have no power as long as the [UN] Security Council does nothing. There is no justice for Syria."...

4 August

[Why do some UN peacekeepers rape?](#)

(Aljazeera)

... According to a recent investigation by the Associated Press (AP), between 2004 and 2016, the United Nations received almost 2,000 allegations of sexual exploitation and abuse against its peacekeepers. The UN says it has a zero-tolerance policy on sexual exploitation and abuse, but survivors, activists, lawyers and human rights organisations say such crimes have been allowed to continue with impunity. Through conversations with UN peacekeepers and officials, gender experts, academics, researchers and activists, as well as through an investigation of UN data, in this four-part series, we try to navigate these competing accounts to answer the question: How did some peacekeepers become predators? In part one, we examine the history of accusations against the UN...

[More than 250 killed in DR Congo's Kasai, says UN](#)

(Aljazeera)

More than 250 people, including 62 children, were killed in the Democratic Republic of Congo from mid-March to mid-June, UN human rights investigators said in a new report. The High Commissioner for Human Rights (OHCHR) based the report, released on Friday, on interviews in June of 96 refugees who fled Congo's Kasai provinces into neighbouring Angola. At least 17 cases were of mutilations and other injuries, nine victims of abductions, four victims of rape and one victim of arbitrary arrest...

3 August

[Yazidi Massacre Survivors Learn Lessons from Srebrenica](#)

(Balkan Transitional Justice)

Yazidis in Iraq on Thursday commemorated the anniversary of the massacres carried out by Islamic State in the northern Nineveh province in 2014, and vowed to seek justice for those who were killed. The event marked three years since Islamic State forces swept across the mountainous Sinjar area, which is populated by the majority of the world's Yazidis. It ended in a bloodbath which a UN panel in June 2016 classified as genocide. Now the survivors want legal recognition that this was genocide, and they want the bodies of their beloved ones to be found. They want what the Srebrenica survivors have achieved...

['We need to talk about male rape': DR Congo survivor speaks out](#)

(BBC News)

Stephen Kigoma was raped during the conflict in his home country, the Democratic Republic of Congo. He described his ordeal in an interview with the BBC's Alice Muthengi, calling for more survivors to come forward. "I hid that I was a male rape survivor. I couldn't open up - it's a taboo," he said. "As a man, I can't cry. People will tell you that you are a coward, you are weak, you are stupid." The rape took place when men attacked Stephen's home in Beni, a city in north-eastern DR Congo...

[Switzerland expands Gambian investigation](#)

(SWI)

The Swiss Federal Prosecutor has expanded its criminal proceedings against former Gambian interior minister Ousman Sonko. The ex-official, who came to Switzerland seeking asylum last year, is accused of crimes against humanity...

2 August

[Kenyan election official Chris Msando 'tortured to death'](#)

(BBC News)

Chris Msando had deep scratches and cuts on his back and hands, the chief government pathologist said. Mr Msando was in charge of Kenya's computerised voting system for next Tuesday's presidential elections. His body was discovered



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next to the corpse of a woman in a forest on the outskirts of Nairobi at the weekend...

Embracing the 'Human Factor': Is There New Impetus at the ICC for Conceiving and Prioritizing Intentional Environmental Harms as Crimes Against Humanity?

(JICJ)

... the Prosecutor specifically recognizes the grave significance of environmental harms, prompting this article's analysis of the relationship between such circumstances and the constitutive elements of crimes against humanity...

1 August

Building a Case for Prosecuting the Genocide of Yazidi Women

(PassBlue)

As the Islamic State's self-proclaimed caliphate in Iraq crumbles, assessments begin to emerge of the damage left in its wake by its cultural nihilism and harsh sectarian absolutism designed to remake an Arab society. The human costs have been high in Iraq — in deaths, maiming, displacement and the

enslavement of girls and women. A campaign by legal experts now wants more action to be done on the systematic sexual abuse of women as a crime of genocide, separate from but related to the larger focus on Islamic terrorism and its more visible mass atrocities. Thousands of terrified and battered women, silenced and alone, suffer in the shadows...

UK court: Tony Blair not to be prosecuted over Iraq War

(Jurist)

The UK High Court rejected a "crime of aggression" allegation Monday against former UK Prime Minister Tony Blair by a former Iraq General Abdul Wahed Shannan Al Rabbat. The two justices dismissed the claim as UK law does not recognize a crime of aggression: ... The matter was dismissed before it could be brought to the Supreme Court for judicial review, the High Court determining that the highest court in Britain would not break away from its ruling in R v. Jones ...

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](#)
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