

Forum for International Criminal Justice Newsletter: August 2018

Welcome to the IAP's Forum for International Criminal Justice (FICJ) August 2018 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 a special in-depth interview with **Timothy Radcliffe**, who speaks frankly about his experience with Canada's Crimes Against Humanity and War Crimes Program and prosecuting crimes against humanity domestically.

***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 Legal Consultant & FICJ Coordinator | email: LC@iap-association.org

Video Highlights



[Click here](#) to watch a Human Rights Watch video about how member countries of the International Criminal Court should increase their support for the Court in the face of increasing challenges to delivering justice.



[Click here](#) to watch a lecture entitled '20 Years of the Rome Statute', by Judge Silvia Fernández de Gurmendi, an international lawyer from Argentina who served as judge at the ICC, as well as President of the Court.



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Ensuring that the ICC Rises to the Challenge

On the 20th anniversary of its establishment, the International Criminal Court needs to up its game

Opinion by Kenneth Roth and Salil Shetty, Foreign Policy in Focus



Four years ago, Human Rights Watch and Amnesty International—joining hundreds of others—urged the United Nations Security Council to send atrocity crimes committed in Syria to the ICC for prosecution. Then, the conflict had already claimed 100,000 lives, overwhelmingly civilians. Today, the death toll is estimated at over half a million, with each day bringing new violations and unlawful killings.

Yet the ICC has been unable to act. Russia's veto at the Security Council continues to block a path to justice for Syria's victims. Other council members, including the United States, have also used or threatened to use their veto to block action on other atrocity crimes. This sad situation is a far cry from the summer of 1998, when many governments with the support of nongovernmental organizations came together in Rome to create the ICC. Many of the major powers including the US opposed the effort, but smaller and medium-sized governments seized what turned out to be a fleeting moment. With a post-cold war faith in multilateralism and a resolve driven by genocide in Rwanda and the former Yugoslavia, these governments acted on longstanding but unrealized ambitions for a permanent, global criminal court. The Rome Statute, the court's founding document, was adopted on July 17, 1998, and the court was set up four years later.

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The ICC is a court of last resort, for the most serious international crimes, including genocide, war crimes, and crimes against humanity. The court can act in all countries that have joined its treaty—123 are now ICC members—but where states have not, as in Syria, a so-called referral from either the government or the UN Security Council is needed. These and other limits notwithstanding, the court’s creation was an extraordinary achievement, firmly establishing a marker on the side of justice and the protection of human rights.

Today, the court has opened formal investigations in 10 countries. But with mass atrocities being committed in many parts of the globe, it is needed elsewhere as well. The court is responding by moving away from its all-Africa focus. For example, the prosecutor’s pending request to open an investigation in Afghanistan would put in reach US nationals alleged to have

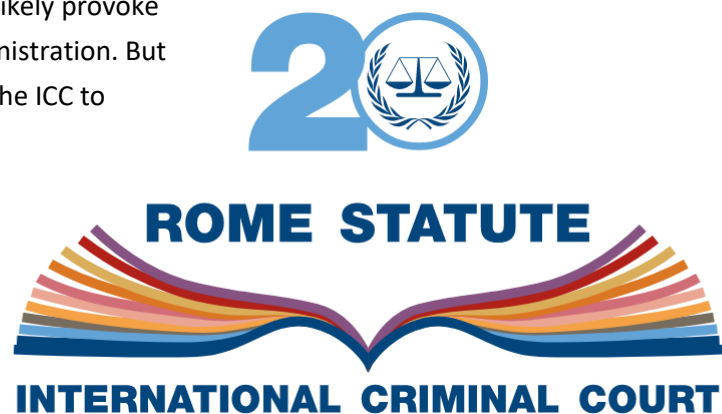
committed war crimes there. That will likely provoke fierce opposition from the Trump administration. But it would demonstrate the potential of the ICC to investigate previously “untouchable

actors” and to demonstrate that no one is above the law, puncturing a damaging if misleading narrative that the court was targeting only African leaders. Similarly, Palestine’s ratification and recent

request to the ICC prosecutor to investigate war crimes there brings into the court’s sights a decades-long situation of near-complete impunity on the part of both Israeli and Palestinian forces.

Yet parallel with this acute need, the court is facing steep challenges. Some of these were to be expected as it becomes more effective and begins to investigate more powerful states or affect their interests. But this is not a sufficient explanation. The court needs to improve its own performance. It has been plagued by lengthy proceedings, insufficient investigations in its earliest cases, and case-selection strategies that don’t always reflect what is most meaningful to victims. The prosecutor’s office would be well served by articulating clear priorities within and among the countries it addresses—and then living up to them.

But the burden of bolstering the ICC also rests with its member states. Like other human rights-protecting institutions, the court has struggled with a lack of political will among its ostensible government supporters, especially when it comes to arresting suspects. Inevitably, fulfilling obligations is more difficult in practice than in the abstract. Fifteen ICC arrest warrants are currently unenforced. In addition, damaging haggling among ICC members over restricting the court’s budget has displaced meaningful debate about how to build an effective institution.



The ICC has also attracted predictable opposition from leaders with reason to fear accountability. Facing possible ICC investigations, Burundi and the Philippines announced their withdrawals from the ICC, with Burundi having now formally left the court. As the now-open Burundi investigation shows, however, withdrawal has little legal effect on the court's ability to pursue past crimes. Kenya, at a time when cases were pending before the ICC against the country's president and deputy president for allegedly engineering attacks on one another's supporters following the 2007 disputed election, tried to orchestrate a mass withdrawal by African countries. It failed in the face of strong opposition from other African governments and African civil society.

To counter such attacks, member states should use every opportunity to demonstrate support for the court. Member states that have complained about a perceived selectivity should support the court as it opens investigations outside Africa. Such concrete assistance can include building pressure to execute outstanding arrest warrants and ensuring that the court has the necessary funds to do its job.

At stake is not just the success of a single institution. The Rome Statute "system" is a network of the national courts of ICC member countries. The accountability embedded in the ICC treaty serves as a catalyst for other justice efforts, such as a UN-backed investigation mechanism set up for Syria to circumvent the Russian veto at the Security Council. That mechanism is not a court, but it can build trial-ready cases for national and international investigations when suspects are arrested and international justice avenues become available.

As the twentieth anniversary of the ICC treaty nears, it is time to renew commitment to this landmark institution and for other states to join the court. These are the dangerous times that the court's founders anticipated, warning in the treaty that the "delicate mosaic [of humanity's common bonds] may be shattered at any time." They believed they were building an institution to ensure that the most basic values—equality, dignity, justice—would be protected by law. It is critical not to turn back from this goal. We urge the global community that supported the ICC's creation to work together with court officials to ensure that the ICC and its fight against impunity are strengthened by adversity, not diminished.

See also:

- ["In the Rome Statute's third decade, what key reforms could make the international criminal justice project stronger, more efficient, and more effective?"](#), current ICC Forum anniversary debate question with responses from key experts in the field
- [The International Criminal Court was established 20 years ago. Here's how](#), Washington Post
- [Why the ICC is worth defending](#), Aljazeera
- [ICC: Strengthen Court on 20th Anniversary](#), Human Rights Watch



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In Profile: Timothy Radcliffe

FICJ Coordinator Danya Chaikel recently had the pleasure to interview Timothy Radcliffe (her former law school classmate) about his work as a Canadian prosecutor and his international criminal law (ICL) experience. Since 2006, Tim has served in Ottawa as a federal prosecutor with the Public Prosecution Service of Canada. Currently, he is on secondment to the Department of Justice (DOJ) in the [Crimes Against Humanity and War Crimes Section](#). Outside of work, he taught ICL at the University of Ottawa for many years, and now he coaches the International Criminal Court (ICC) Moot team. He is also a faculty instructor at the [Philippe Kirsch Institute](#).



Tell us about your experience prosecuting core international crimes and related work?

From 2009 to 2013, I was part of the team that [prosecuted Jacques Mungwarere](#) in Ottawa for genocide and crimes against humanity committed in Kibuye Rwanda in 1994. Following 24 pre-trial motions and 95 days of trial, the accused was acquitted of all charges. The trial featured shocking moments when some Tutsi survivors acknowledged making false accusations against Mr Mungwarere and shared their reasons to subsequently testify on his behalf. During the next few years, I found reprieve from the violence – litigating constitutional challenges to controversial domestic legislation. But the reprieve ended. From 2015 to 2018, I was part of the team that prosecuted Ali Omar Ader in Ottawa for the hostage-taking of Canadian Amanda Lindhout and Australian Nigel Brennan in Mogadishu Somalia in 2008-2009. Following challenges to the wiretaps, national security complications, and powerful testimony from victims, Mr Ader was convicted for his participation in their brutal 15-month captivity. This trial contrasted the horrific depths of greed and depravity against the inspiring power of love and forgiveness. Currently at DOJ, I advise Royal Canadian Mounted Police investigators in support of Canada's policy of 'No Safe Haven' for perpetrators of atrocity crimes.

What drew you to work in this field?

That's a hard question to answer. Before law school, professors at Queen's University challenged me to not 'sell out'. Upon graduation, my work for an investment bank in Zurich and for the European Space Agency in Paris proved their point – the 1% doesn't need any more help. Years of travel further highlighted the shameful inequality of income, security, and opportunity. While studying at the University of British Columbia (UBC) law school in Vancouver, I was inspired by lectures from Louise Arbour, Lloyd Axworthy, and Philippe Kirsch. The 2004 Jessup Moot addressed issues of ICL and the ICC. Numerous UBC Law professors agreed to supervise directed-research papers in ICL. Vancouver's

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criminal bar supported law students to appear in court. Upon arrival in Ottawa in 2005, DOJ's Legal Excellence Program permitted articling rotations with both the Federal Prosecution Service and the War Crimes Section. Connecting the dots looking backwards, I have many people to thank for challenging me, inspiring me, supporting me, and taking a chance on me. It's now time to pay it forward.

Describe Canada's Crimes Against Humanity and War Crimes Program in terms of its mandate, successes, and challenges.

The primary goal of Canada's Crimes Against Humanity and War Crimes Program is to deny safe haven in Canada to war criminals or those suspected of being directly involved or complicit in the commission of war crimes, crimes against humanity, or genocide. The Program has four partners: the Canada Border Services Agency; Immigration, Refugees and Citizenship Canada; the Royal Canadian Mounted Police; and the Department of Justice. The four partners collaborate to prevent entry by war criminals into Canada by denying visas overseas and denying entry at our borders. They also collaborate to obtain remedies against war criminals already present in Canada, including: inadmissibility determinations; exclusion from refugee protection; removal orders; citizenship revocation; extradition; surrender; criminal investigation and prosecution. Canada's Program also actively cooperates with international partners and conducts outreach with domestic stakeholders.

Two current successes of the Program are cultural. Firstly, war crimes issues are now a routine part of the operations and vocabulary of Canada's public service, including: visa officers; border officials; analysts; advisors; investigators; and litigators. In this sense, war crimes issues are now no different from human trafficking, drug smuggling, or child exploitation. Secondly, trust is increasing between the NGO community and Canada's public service. This permits us to explore collaborative approaches in the international fight to end impunity.

Two current challenges facing the Program are not unique to Canada. Firstly, the record number of international migrants and the proportion of refugees and asylum seekers threaten to overwhelm the existing systems. War criminals seek protection in this unprecedented volume. Secondly, private-sector profit-driven corporations are willing to assist governments in the fight to end impunity. For example, they offer big-data analytics and preservation of digital evidence from social media platforms. Engaging these new partners must be done responsibly and cautiously.

What does international criminal justice mean to you?

It's an imperfect expression of our shared commitment to the rule of law. Echoing Louise Arbour, it's a long-term investment in peace – but still a work in progress.



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Leaving the violent details aside, tell us about some “shocking moments” in the Mungwarere genocide trial

Numerous Tutsi survivors testified how their families and friends were slaughtered by Hutu attackers in the Bisesero Hills in 1994. They further testified to having falsely accused Mr Mungwarere of participating in these attacks. They cited various reasons for lying to the RCMP investigators: a spirit of hatred and vengeance; to ensure the incarceration of a Hutu; fear of reprisals from powerful Tutsis;



Jacques Mungwarere and Justice Charbonneau are shown in a courtroom in Ottawa on 28 May 2012. (Sarah Wallace / THE CANADIAN PRESS)

to travel abroad; and to obtain compensation from investigators. Some also articulated various reasons why they agreed to testify on behalf of the accused: a spirit of reconciliation; to liberate one’s conscience; and first-hand experience of wrongful imprisonment. One survivor even apologized – to the RCMP, to the prosecution team, and to the accused – for the damage caused by his lies. In response to all this testimony tendered on behalf of the accused, the trial judge observed that the prosecution’s evidence was not irredeemably tainted by the false accusations. In the judge’s final opinion, however, the prosecution’s evidence only established a probability of guilt.

What advice would you give to fellow prosecutors who are considering working in this field?

Have the courage to give hard advice, and avoid files with witness-credibility issues like the one I just described! But in all seriousness, here’s some advice that I found meaningful from a wise old judge: All lawyers must learn to juggle. We must keep many ‘balls’ up in the air simultaneously: multiple cases; family responsibilities; volunteer endeavours; etc. We’re confident that if one ball drops, it will bounce back up. Successful lawyers, however, learn which balls are made of glass – and don’t bounce. In particular, successful lawyers don’t lose sight of three glass balls: emotional well-being; physical health; and supportive relationships.

In my experience prosecuting atrocity crimes, another glass ball to protect is your perspective. At work, narratives of violent victimization take a significant toll. Inevitably and regrettably, this toll follows us home after work. Daily accounts of murder, sexual violence, torture, and profound suffering negatively impact the lens through which we evaluate the priorities and worries of our family and friends. Instead of judging their concerns as first-world problems, we must strive to remain mindful and protect a healthy perspective – and continually thank those who put up with us!

- Tim can be reached at tim.radcliffe@justice.gc.ca
- Read more about [Canada’s Crimes Against Humanity and War Crimes Section](#)

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1st French edition: IAP Specialisation Course for Junior Prosecutors: on International Criminal Justice & International Cooperation in Criminal Matters (26 Sept- 5 Oct 2018)



The [Siracusa International Institute for Criminal Justice and Human Rights](#) is pleased to launch the **1st French edition of the Specialisation Course for Junior Prosecutors on International Criminal Justice and International Cooperation in Criminal Matters (SCJP)**. This course is co-organised with the International Association of Prosecutors (IAP) and the International Association of Francophone Prosecutors (AIPPF).

The SCJP will be held in Siracusa, Italy from **26 September to 5 October 2018**.

Registration is now open with limited places available. For further information, including registration details please follow [this link](#).

[L'Institut international de Syracuse pour la justice pénale et les droits de l'homme](#) (Institut de Syracuse), l'Association internationale des procureurs et poursuivants (AIP) et l'Association internationale des procureurs et poursuivants francophones (AIPPF) ont le plaisir d'annoncer le lancement de la **1^{ère} édition francophone du Cours de Spécialisation destiné aux Jeunes Procureurs** sur le Droit Pénal International et la Coopération Internationale en Matière Pénale (CSJP).

Le CSJP se tiendra à Syracuse, en Italie, du 26 septembre au 5 octobre 2018.

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L'inscription est maintenant ouverte et les places disponibles sont limitées. Pour plus d'informations et instructions sur la procédure d'inscription, [veuillez suivre ce lien](#).

'Oslo Recommendations for Enhancing the Legitimacy of International Courts': international judges take a stand on current challenges facing the international justice system

IntLawGrrls - Fifteen judges from thirteen international courts recently drafted and finalized a set of recommendations aimed at reinforcing the legitimacy of institutions of international justice. These were the participants of the 2018 session of the Brandeis Institute for International Judges (BIIJ), organized collaboratively in June 2018 by the International Center for Ethics, Justice and Public Life, of Brandeis University, and the PluriCourts Center for the Study of the Legitimate Roles of the Judiciary in the Global Order, a center of excellence of the University of Oslo Faculty of Law.



BIIJ 2018 participants

Over the course of the BIJJ, participants examined carefully how some international courts are currently experiencing 'pushback', be it from member states, civil society groups, or even their own parent bodies. The World Trade Organization (WTO) Appellate Body, for example, finds itself at a critical juncture. The United States has recently blocked all new appointments to its seven-member bench, which will soon bring its important trade dispute resolution work to a standstill. The International Criminal Court (ICC) has heard noise about withdrawal by some member states in response to action by its Prosecutor to examine crimes upon their territories. More generally, international courts and tribunals feel a waning of the late 20th century enthusiasm and support for international justice institutions. BIJJ judges clearly realize that a proactive response on the part of institutions may help them to negotiate current conditions.

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The Recommendations, which BIJ participants drafted and endorsed in their personal capacities, articulate relevant policies and activities in five arenas: nomination and selection of international judges; ethics and judicial integrity; efficiency of proceedings; transparency of proceedings and access to judicial output; and role of judges in outreach and interactions with the public.

We find it first of all important that the fifteen international judges acknowledge the legitimacy challenges facing international courts. It is also significant that the judges believe that both courts and members of their benches have a responsibility to address these issues, and that such responsibility goes beyond what is the ‘primary work of international judges’, i.e. to ‘produce well-reasoned and timely judgments’.

In the section devoted to the nomination and selection of international judges, the Recommendations emphasize the importance of having multiple candidates for judicial vacancies and the need to consider diverse candidates. The document also broaches the question, perhaps publicly for the first time, of establishing age limits for judicial nominees to ensure the ongoing fitness of international judges over the length of their terms. A final provision in this section addresses the need for nomination and selection authorities to ensure that international judges may carry out their work with independence and in security.

The section on ethics and judicial integrity deals with judicial culture in the court as well as ethical issues. It is notable that the judges felt a need to emphasize that dissenting and separate opinions should ‘be delivered with restraint and formulated in respectful language so as not to undermine the authority of the court’.

The provision that ‘[e]ach international court should have a code of judicial ethics whose provisions are well known to judges’ would seem obvious and unnecessary to mention. Nevertheless, some BIJ 2018 participants reported that while their institutions may have already formalized a set of ethical guidelines, new members of the bench may not be introduced to them nor even be aware of their existence. The guidelines then lose their positive potential.

It is also unusual for international courts, faced with alleged ethical violations by a judge, to appoint ‘an external committee... composed of individuals with relevant knowledge and experience to conduct the investigation and make recommendations’. Some newer institutions have instituted such measures, and this inspired BIJ 2018 participants to examine the benefits of such an approach. This provision of the Oslo Recommendations thus underscores the wisdom of not confining consideration of potentially serious ethical breaches to internal procedures behind closed doors.

Other provisions of the Recommendations address issues that not infrequently lead to public criticism of international courts. International judicial proceedings may be inefficient and overly lengthy; their judges may take on too much outside work to the detriment of their judicial responsibilities; proceedings cannot always be followed remotely by interested parties; judgments

and other judicial output may not be posted or archived in such a manner as to be easily accessible by scholars, other courts, and the larger public; and messaging and outreach by international courts sometimes suffer from inaccuracy and inconsistency.

The Oslo Recommendations for Enhancing the Legitimacy of International Courts represent an initial step toward initiating reforms in institutions of international justice that might help them to secure their standing on the world stage. Significantly, this first step has been made collectively by individuals whose positions serve as the fulcrum upon which the entire international justice system balances.

- Read the full text of the Oslo Recommendations [here](#).

Spain launches truth commission to probe Franco-era crimes

The Guardian - Spain's new government has announced plans to establish a truth commission to investigate crimes against humanity committed by the regime of the former military dictator Francisco Franco, more than 40 years after his death. Under a new law of historical memory, the criminal records of those convicted for opposing the regime will be wiped and



The tomb of Francisco Franco, marked with a 150-metre cross, in the Valle de los Caídos near Madrid. Photograph: Óscar del Pozo/AFP/Getty Images

organisations that venerate the memory of the dictator, such as the Fundación Francisco Franco, will also be outlawed.

Members of the foundation lay fresh flowers every day on Franco's grave and its website carries eulogies to his memory. Franco, a contemporary of Hitler and Mussolini, came to power after the 1936-39 civil war and ruled until his death in 1975. The Spanish government says it will take responsibility for making a census of the victims of the civil war and the ensuing dictatorship. It will also open an estimated 1,200 mass graves.

Dolores Delgado, the justice minister, told parliament: "It's not acceptable that people in their 90s who are desperately trying to recover their parents' remains should be blocked by a judge or the

arbitrary ruling of a local authority. “Nor is it acceptable that Spain is, after Cambodia, the country with the highest number of disappeared in the world.”

Under an earlier historical memory law passed by the socialist government in 2007 the state had a duty to help families trace and exhume relatives buried in unmarked graves but that support was withdrawn after the right-wing People’s party came to power in 2011. A key difference in the new proposal is that the government’s commission is taking the lead, whereas under the 2007 law it simply offered support to families trying to trace relatives who disappeared under the dictatorship.

The proposal has been greeted with caution by individuals and organisations who have spent years fighting for justice for the regime’s victims. “If our sentences are annulled we will no longer be branded as criminals and some sort of normality will be restored after a 40-year delay,” José María “Chato” Galante told the Guardian.

Galante was convicted almost 50 years ago of “illicit association” and “illegal propaganda” and spent seven years in prison where he was tortured by the sadistic policeman known as Billy the Kid. “This is a positive step but none of it makes sense unless the torturers and those who committed crimes against humanity are brought to justice,” he said.

An estimated 140,000 people disappeared during and after the civil war, not including those killed in combat. Despite repeated demands from the UN, Spain is the only democracy that hasn’t investigated state terrorism once a dictatorship had come to an end. When democracy was restored in the years after Franco’s death, all sides agreed to maintain a pact of silence over the civil war and its aftermath.

“They shouldn’t be able to hide behind the 1977 amnesty law, which doesn’t apply to crimes against humanity,” Galante said. “All of the victims of Francoism should get justice for the crimes committed against them. Without that, reconciliation is impossible.”

According to official figures, the remains of 120,000 victims have been exhumed from 2,591 unmarked graves around the country. The areas with the largest number of graves are Andalusia in the south and the northern regions of Aragón and Asturias.

“We need to see what exactly they mean when they say the state is taking responsibility,” said Emilio Silva of the Association for the Recovery of Historical Memory. “What we need to see is the removal of the obstacles to prosecuting the crimes committed by the dictatorship, principally the amnesty law, but also a politically inspired judicial ruling that no one should be tried for those crimes. That ruling needs to be overturned.”

Delgado said Spain “was committed to uncovering the truth using the correct and effective measures that can guarantee reparation for the victims of Francoism”.



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She added: “Spain can no longer continue to be identified in international forums as one of the least compliant countries in regard to resolutions on the violations of human rights, the right to truth, justice and reparations.”

The UN rapporteur, Pablo de Greiff, in 2014 denounced the government’s inaction regarding the “just demands” of the victims of Francoism. It remains to be seen how far the law will extend to returning property that was confiscated often simply because the owner had been denounced as a “red”.

Silva says it is not clear how this law goes further than the one proposed by José Luis Zapatero’s government in 2007, which deliberately did not annul the criminal records of the victims. “Thousands of those convicted under the regime had their property confiscated – homes, land, savings – and Zapatero’s government was afraid that if the sentences were annulled the confiscations would be, too, which would open the door to the heirs reclaiming what is rightfully theirs,” he said.

Betraying Justice for Rwanda’s Genocide Survivors

Opinion by Jina Moore, New Yorker



In 1994, Hutu extremists killed an estimated 800,000 Tutsis in just a hundred days. Now the victims are decrying the early release from prison of the genocide’s perpetrators. Photograph by Scott Peterson / Liaison / Getty

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In July, 1993, an eleven-year-old named Damas Dukundane got a new pair of shoes. His mother bought them, unused, and paired them with a new blue suit. She was not terribly religious, and her son's baptism would be the only time in her life that she would enter the brick church in the unremarkable village of Kaduha, in rural Rwanda. What the rest of the family looked like on that day, in their nicest clothes, Damas does not remember. There are no surviving photographs, and no surviving witnesses, either.

One year later, his father was missing, and his mother, like so many mothers from the area, had fled to the church, with her five children. Outside, they huddled in a crowd of hundreds, praying for their lives. The village's men encircled them protectively, raising machetes and sticks, hoping to intimidate the *interahamwe*, the Hutu militias moving house to house and church to church in a national rush to exterminate the country's ethnic-minority Tutsi population.

"At first, we were stronger than them, because we were the ones with nowhere else to go," Damas recalled recently. "We were the ones who were fighting for our lives. Then the military came with guns, and that's when people realized—we can never win a fight with the military."

This is how the genocide in Rwanda unfolded. From hilltop to hilltop, across a country famous for its undulating landscape, *interahamwe* chased their neighbours with machetes and clubs. They were trained, dogged, and successful. But the most efficient, large-scale killing happened when soldiers arrived with automatic weapons and seemingly limitless ammunition. "When they started shooting into the crowd, the people ran. We realized this time there was no way they can fight," Damas said. "That is how the apocalypse of us happened."

The man who brought the military to Damas's church was Aloys Simba. In 1994, Simba was fifty-five years old, an ex-colonel celebrated for helping to bring Juvénal Habyarimana, then the President, to power in a coup in the nineteen-seventies. On the evening of April 6, 1994, for reasons that are still a matter of historical dispute, Habyarimana's plane was shot down. After the crash, the Tutsi became prey for legions of armed, agitated Hutu militiamen. Killings quickly began, and then spread. Virtually every hilltop became a death site that rainy season, as Hutu extremists killed an estimated eight hundred thousand of their neighbors in just a hundred days.

Simba armed the soldiers who attacked the Kaduha parish. He ordered them to chase every last Tutsi who might escape and kill any Hutu comrade who showed mercy. He forced the condemned to dig their own graves. In 2005, Simba was convicted of genocide and crimes against humanity at an international war-crimes tribunal, in Arusha, Tanzania. Other places where he killed—Murambi, Kibeho—are, in today's Rwanda, touchstones of collective memory. His conviction was affirmed in 2007, after an appeal.

Soon, if all goes as planned—and there is little reason to expect that it will not—Simba, a giant of genocide, will be a free man. He is expected to be paroled, along with Dominique Ntawukulilyayo,

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who, after promising twenty-five thousand Tutsis safety, lured them to a hilltop in Kabuye before having them slaughtered, and Hassan Ngeze, a journalist whose hateful propagandist newspaper, *Kangura*, many Rwandans still see as the real fuel of the genocide. The court regards Ngeze's conviction for inciting genocide as a "landmark" in international justice, though his life sentence was reduced to thirty-five years on appeal.

"We really thought someone like Ngeze, at least, who really incited the extremists to kill their neighbors, should stay in prison for life," Freddy Mutanguha, the vice-president of Ibuka, a national association of survivors of the 1994 genocide, said. "He made too many victims in this country. It's really very insulting." He called the court's practice of early release "a new form of impunity."

Whether to release the three men is up to one judge, Theodor Meron, the president of the Mechanism for the International Criminal Tribunals, whose decision cannot be appealed. Though thousands of procedural considerations went into setting up the International Criminal Tribunals for Rwanda and the former Yugoslavia, twin courts tasked with trying the perpetrators of near-simultaneous genocides, the ad-hoc system nevertheless failed to establish clear standards for sentence reductions. Now, more than twenty years after the trials began, the guilty who have been imprisoned in seventeen countries around the world are asking to get out early. A study from 2014 found that nearly half of the convicts from both courts have been released, the vast majority of them before serving full sentences.

The first decisions in paroling genocidaires cited domestic parole regulations, which often grant eligibility after two-thirds of a sentence has been served; over time, as Meron has noted, the Tribunals have come to rely on two-thirds of time served as an eligibility standard. But critics question any parole system for the world's gravest crimes. Early release of rehabilitated criminals may make sense in states that are trying to reduce the costs of incarceration, and where authorities can monitor the activities of parolees. But the criminals convicted by international tribunals have perpetrated a scale and degree of harm that [domestic regulations were not designed to account for](#); furthermore, they are not supervised after their release, and there are no legal grounds for detaining them should they once again begin stoking ethnic hatred or worse. In a letter to the court, the Rwandan government has adamantly protested the request, writing that the men's crimes "offend all standards of humanity, morality and decency" and continue to harm Rwanda and Rwandans a quarter-century later. Damas wholeheartedly agrees. "This may not be something the whole world is ready to understand—it's just my opinion—but, if we are going for justice, Simba cannot be let out," he told me. "It would be unfair for the small people who took those machetes, who came running after us, who had no idea of whatever was happening up the chain of command."...

- Read the full article on the [New Yorker website](#)



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At last, a law that could have stopped Blair and Bush invading Iraq

The Hague's new crime of aggression might give belligerent heads of states a reason to pause

Opinion by Geoffrey Robertson AO, QC, The Guardian

[17 July] is a red-letter day for international law: from then on, political and military leaders who order the invasion of foreign countries will be guilty of the crime of aggression, and may be punishable at the international criminal court in The Hague. Had this been an offence back in 2003, Tony Blair would have been bang to rights, together with senior numbers of his cabinet and some British military commanders. But if that were the case, of course, they would not have gone ahead; George W Bush would have been without his willing UK accomplices.



'Had this been an offence back in 2003, Tony Blair would have been bang to rights, together with senior numbers of his cabinet and some British military commanders.' George W Bush and Tony Blair shake in 2001. Photograph: Mario Tama/EPA

The judgment at Nuremberg declared that “to initiate a war of aggression ... is the supreme international crime”. But this concept never entered UK law (as the misguided crowdfunded effort to prosecute Blair discovered last year). International acceptance of it stalled until states could agree on an up-to-date definition. The crime was included in the ICC jurisdiction back in 1998, but was suspended until its elements could be decided (in 2010) then ratified by at least 30 states (in 2016). At last it is finally being “activated”. In the meantime, Iraq and Ukraine have been invaded and other countries threatened, while Donald Trump attacked Syria last year. Now, the very existence of the crime of aggression offers some prospect of deterrence, and some degree of certainty in identifying the criminals.

The crime will be committed by those who direct the use of armed force against the “sovereignty, territorial integrity or political independence” of another member state, in a manner which “by its

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character, gravity, and scale” amounts to a “manifest violation” of the UN charter (which prohibits such attacks, other than in self-defence). This allows some wriggle room – Trump’s attack on Syria lacked the “gravity and scale” required (it did little damage) but it might well apply to Russia for its incursions into Ukraine – the test is whether Vladimir Putin and his armed forces were “substantially involved”, whether secretly or by proxy, in the use of armed force. Self-evidently, it would have incriminated those who ordered the invasion of Iraq.

The definition has a few holes: it does not cover cyber-attacks, for example, which do not take human life (at least not yet) and it does not incriminate leaders of Islamic State or other terrorist groups – defendants must be in command positions of the aggressor state.

There is a question of whether it would deter “humanitarian intervention” – a right to invade to relieve extreme humanitarian distress if there is no other way to save lives. My own view is that genuine humanitarian action will escape liability, whatever its scale and gravity, because its “character” (that is, to put an end to crimes against humanity) will be consistent with (and not a “manifest” breach of) the UN charter.

Although ICC jurisdiction over aggression is activated this week, its direct power of prosecution will only apply to nationals of states that have ratified the newly defined crime. Only 35 have stepped forward so far, mainly from Europe, and the UK, quite disgracefully, has done all it [can to block the process](#) (in remembrance, perhaps, of Tony Blair). It must be put under public pressure to change course.

British politicians (and others from non-ratifying states) can be charged as a result of a reference by the security council to the ICC, but here Britain has a veto, along with the US and Russia. So the crime of aggression, once up and running, will not in practice run very far: the superpower veto means that it will not be allowed to finger the collar of any politician or military leader who has acted in alliance with one of the security council’s “big five”.

Nonetheless, Tuesday marks the completion of the arsenal of international criminal law, irrespective of whether its latest weapon will be used. The very fact that it might conceivably be deployed will provide some measure of deterrence, by informing the international community of a legal red line and encouraging public protest when it is in danger of being overstepped.

It is hardly surprising that Lithuania, Latvia and Estonia were among the first to ratify the crime: it will not stop a Russian invasion, but its existence as an international law offence might give Putin a reason to pause. Sending assassins armed with [polonium](#) or [novichok](#) to another state to kill its citizens might also qualify as aggression – a fact that makes the UK government’s refusal to ratify the amendment stupid as well as hypocritical.



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News July 2018

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31 July

[Will Philippines rejoin the International Criminal Court?](#)

(Rappler)

Under President Duterte, the Philippines chalked a world record, a fact that hasn't probably sank into our consciousness yet: we are the second country to leave the International Criminal Court (ICC). We share the global spotlight with Burundi, the first nation to do so... A replay of what took place in South Africa is unfolding in the Philippines today. In May, the minority senators – Francis Pangilinan, Franklin Drilon, Paolo Benigno Aquino IV, Risa Hontiveros, and Antonio Trillanes IV – questioned Duterte's unilateral withdrawal from the ICC before the Supreme Court. They are asking the Court to declare that the withdrawal from the Rome Statute, which established the ICC, requires the approval of at least two-thirds of all the members of the Senate...

30 July

[After condemning the Yazidi genocide, how can the government then deny its victims asylum?](#)

(Independent)

This Friday, 3 August, will mark the fourth anniversary of the Yazidi genocide, when Isis descended upon the Sinjar region of Iraq, home to hundreds of thousands of Yazidis, and systematically slaughtered and captured nearly all in their path. Thousands sought sanctuary in the mountains but those not lucky enough to escape were either murdered in their homes or taken captive... It is not enough to condemn a genocide. The UK government must actively support Yazidi victims and particularly those claiming asylum on UK soil...

28 July

[The ICC's problem is not overt racism, it is Eurocentricism](#)

(Aljazeera)

...The point is that the ICC, just like the larger international legal order within which it operates,

is Eurocentric and the world views, perspectives and stand points it reflects and embeds are uncompromisingly European. International institutions, and the norms, categories, priorities and theories dominant in international law come from a particular place and reflect the stand points of that place...

27 July

[Serbia Stalling on War Crimes Prosecution, Report Says](#)

(Balkan Transitional Justice)

The Humanitarian Law Centre, HLC, on Friday warned in a report that Serbia risks missing the last chance to prosecute culprits of grave crimes in the wears of the 1990s, as witnesses steadily die away. "Time is passing and victims, witnesses and culprits alike are passing away, while memories become less reliable," Jelena Krstic, from the HLC, said. She added that Serbia seems to have decided on a strategy of "waiting for time to do its work", instead of implementing its own war-crimes prosecution strategy. The HLC report on the implementation of the national strategy for war crimes prosecution noted no notable progress in the past six months concerning the goals laid out in the strategy...

26 July

[Kosovo Mulls Allowing War Crime Trials in Absentia](#)

(Balkan Transitional Justice)

Kosovo's judicial authorities are considering changes to the criminal code in order to prosecute war crimes suspects *in absentia*, as they see little chance of Kosovo signing an agreement with Serbia on judicial cooperation. Experts told BIRN that hundreds of Serbian suspects in war crimes cases would be prosecuted if Pristina could try them *in absentia*...

[UN Human Rights Council appoints panel to probe recent Gaza border violence](#)

(Jurist)

The UN Human Rights Council (UNHRC) [official website] on Wednesday appointed [press release] a three-member legal panel to conduct a war crimes probe into the alleged Israeli human rights violations on the Gaza border. The resolution to "urgently dispatch an independent, international

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commission of inquiry was backed on Friday. Twenty-nine members of the council voted for, 14 members abstained, and both the US and Australia voted against the resolution...

24 July

[Serbia to Seek Extradition of War Crimes Suspect](#)

(Balkan Transitional Justice)

Serbia's justice ministry told BIRN on Tuesday it would ask neighbouring Montenegro to extradite Predrag Vukovic, a Yugoslav Army veteran accused of involvement in the massacre of 46 ethnic Albanian civilians in Kosovo in 1999. On the run since 2014, Vukovic, alias Madzo, was arrested in the Montenegrin port city of Bar on July 20 for illegal fishing. He gave a false name, but security checks determined his true identity...

23 July

[From kidnap to torture, the database rigorously logging every Syrian atrocity](#)

(The Guardian)

On the third floor of a nondescript office block in downtown Copenhagen, about 2,500 miles from Damascus, a server gently hums. Its 600,000 gigabytes of data is comprised of thousands of photographs of men, women and children, witness accounts, ages, causes of death, place names, military ranks and weapon types. The database holds the story of Syria's slide from authoritarianism into a civil war that, in the course of eight long years, has cruelly morphed into an international conflict with a scarcely imaginable human cost. This memory bank may also amount to the best hope many Syrians have of getting justice. The database is owned by the Violations Documentation Center in Syria (VDC), a non-governmental organisation founded by the lawyer Razan Zaitouneh, a Syrian human rights activist who was well-known even before the revolution erupted in 2011...

[Montenegro Arrests Kosovo War Crimes Suspect](#)

(Balkan Transitional Justice)

Police in Montenegro on Sunday confirmed to BIRN that a man they had arrested on Friday was a former Yugoslav Army member called Predrag Vukovic "Madzo" – who was wanted in Serbia for war crimes in Kosovo...

[Confirmation of Charges Hearing against Thomas Kwoyelo in Ugandan Court Postponed Indefinitely; Judiciary Cites Lack of Funds](#)

(International Justice Monitor)

The confirmation of charges hearing against Thomas Kwoyelo, which was scheduled to start on Monday, July 23, has been postponed again, indefinitely this time. The reason for the postponement is purportedly due to lack of funds. This makes it the third postponement in a row and leaves uncertainty on whether the charges against Kwoyelo will be confirmed. Kwoyelo, a former commander in the Lord's Resistance Army (LRA), is facing charges of war crimes and crimes against humanity before the International Criminal Division (ICD) of Uganda's High Court...

22 July

[The Painstaking Hunt for War Criminals in the United States](#)

(The New Yorker)

A few years ago, Mike MacQueen, a historian working for the Department of Homeland Security, was at his desk combing through decades-old Bosnian military records, in search of war criminals who had eluded justice. The documents listed the names of top officers in a battalion implicated in the massacre of eight hundred Muslim prisoners at a schoolhouse and dam in eastern Bosnia, in 1995. He noticed that the name of one Bosnian Serb officer kept showing up in the logs: Ilija Josipović...

19 July

[Myanmar authorities planned genocide against Rohingya, rights group claims](#)

(The Guardian)

Authorities in Myanmar made preparations for attacks against the Rohingya with "genocidal intent" in the weeks before last year's purge, a rights watchdog has claimed. A report by Fortify Rights, a Bangkok-based organisation, alleges that officials carefully planned a systematic assault on the Rohingya community...

[Bangladesh court sentences four to death for crimes against humanity during 1971 war](#)

(Jurist)

The International Crimes Tribunal of Bangladesh (ICTB) sentenced four people to death on Tuesday for crimes against humanity during the country's



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1971 war of independence from Pakistan. The convicts, all over the age of 65 at the time the judgment was passed, were charged with committing genocide, murder, abduction and torture from May 7 through November 24, 1971, in the Moulvipazar district villages of Panchgaon and Paschimbhag...

17 July

[U.N. Sanctions Can Help Stop Rape in War](#)

(IntLawGrrls)

Sexual violence is clearly prohibited in peacetime and wartime, both by international human rights law and the *lex specialis* international humanitarian law. Despite these prohibitions, sexual violence remains prevalent in many modern conflicts. Furthermore, it continues to be used intentionally by government forces and militias as a weapon in order to achieve military or political objectives. As seen in Myanmar, South Sudan, Syria and the DCR, sexual violence is used effectively to terrorize, forcibly displace, ethnically cleanse, and control civilian populations seen as the “enemy” - at the cost of women and girls...

15 July

[Afghanistan conflict: Civilian deaths hit record high, says UN](#)

(BBC)

The number of civilians killed in the long-running war in Afghanistan reached a record high in the first six months of this year, the UN says. Some 1,692 fatalities were recorded, with militant attacks and suicide bombs said to be the leading causes of death. The report comes as at least seven people were killed in an attack on the rural development ministry in Kabul...

12 July

[Disappearances and torture in southern Yemen detention facilities must be investigated as war crimes](#)

(Amnesty International)

Justice remains elusive a year after a network of secret prisons was first exposed in southern Yemen, Amnesty International said in a new report today that documents egregious violations going unchecked, including systemic enforced disappearance and torture and other ill-treatment amounting to war crimes...

11 July

[Is Intentional Starvation the Future of War?](#)

(The New Yorker)

...The U.S.- and Saudi-backed war here has increased the price of food, cooking gas, and other fuel, but it is the disappearance of millions of jobs that has brought more than eight million people to the brink of starvation and turned Yemen into the worst humanitarian crisis in the world. There is sufficient food arriving in ports here, but endemic unemployment means that almost two-thirds of the population struggle to buy the food their families need. In this way, hunger here is entirely man-made: no drought or blight has caused it...

10 July

[Yemen – A Crime Against Us All](#)

(Jurist)

...There is no militarily necessary reason for the destruction, the strike carried out by one of the combatants who knew or should have known about the laws of armed conflict. The rules do not matter in most conflicts of the 21st century. Welcome to the dirty little wars that nip at the heels of civilization, a civilization grown weary of it all and who look the other way. It is just too hard to marshal enough political will to do something...

[Liberia Takes Small Step Toward Justice for War Crimes](#)

(Human Rights Watch)

Liberia inched closer to justice for war crimes this week. During an appearance before the United Nations Human Rights Committee in Geneva on Monday, the Liberian delegation pledged – for the first time – to issue a public statement on accountability for grave crimes committed during the country’s two civil wars. This promise falls far short of what is needed, but it’s a move in the right direction...

[Mass rape and killings in South Sudan may constitute war crimes, says UN](#)

(The Guardian)

The United Nations has accused South Sudanese government forces and allied militias of potential “war crimes” over a campaign of rape and killing that targeted civilians in opposition-held villages in the conflict-torn country. According to the UN



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human rights office, at least 232 civilians were killed and 120 women and girls raped during an offensive between 16 April and 24 May in the country's Unity state, with three commanders identified as bearing the "greatest responsibility" in the violence...

7 July

[Syria war: Chlorine possible at Douma 'attack' site - OPCW](#)

(BBC)

A report by the chemical weapons watchdog suggests chlorine may have been used in April's suspected chemical attack on the Syrian town of Douma. The interim report by the Organization for the Prohibition of Chemical Weapons (OPCW) said "various chlorinated organic chemicals" had been found (in samples taken from two locations), but there was no evidence of nerve agents. Medics say dozens of civilians were killed in the alleged attack by government forces on the rebel-held town in the Eastern Ghouta region near Damascus...

6 July

[France upholds life sentences for Rwanda genocide mayors](#)

(AFP)

A French court on Friday upheld life sentences for two former Rwandan mayors for taking part in the massacre of hundreds of ethnic Tutsis during the country's 1994 genocide. Octavien Ngenzi, 60, and Tito Barahira, 67, had launched an appeal after they were found guilty in 2016 of crimes against humanity, genocide and summary executions in their village of Kabarondo. Relatives of the pair sobbed quietly as the ruling was read out in court, while Ngenzi and Barahira listened in silence...

5 July

[Liberia: 76 Groups Seek Justice for War Crimes](#)

(Human Rights Watch)

The Liberian government should undertake fair and credible prosecutions of international crimes committed during its two civil wars, 76 Liberian, African, and international nongovernmental organizations said in a submission to the United Nations Human Rights Committee released today. The submission was made ahead of Liberia's appearance before the committee, which monitors implementation of the International Covenant on

Civil and Political Rights by its states parties, scheduled for July 9-10, 2018 in Geneva...

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

(ICC Press Release)

On 4 July 2018, Pre-Trial Chamber I of the International Criminal Court issued a second warrant of arrest for Mahmoud Mustafa Busayf AL-WERFALLI for his alleged responsibility for murder as a war crime in the context of the non-international armed conflict in Libya...

4 July

[ICC fugitive Mahmoud Al-Werfalli makes a cinematic prison break](#)

(The Libya Observer)

The commander of the frontlines at Al-Saiqa Force of the self-styled army in eastern Libya, Mahmoud Al-Werfalli, has escaped his detention in Rajma, where Khalifa Haftar's general command is located, sources from the eastern region reported Wednesday. The mysterious and quite cinematic prison break of the man, who is wanted by the International Criminal Court (ICC) for war crimes and crimes against humanity, left some skeptical that he might have been released by Haftar at the pressure of Al-Werfalli's loyalists...

[Conflict in Congo's Kasai could be prelude to genocide, U.N. expert warns](#)

(Reuters)

Mutilation, gang rape and killing documented in Congo's Kasai region could be a harbinger of genocide, the U.N. torture investigator told Reuters on Wednesday, calling for action to prevent another Rwanda or Srebrenica. Nils Melzer, U.N. special rapporteur on torture worldwide, said he was alarmed by a report issued by U.N. human rights experts on Tuesday which said Congolese rebels and government troops have committed atrocities including mass rape, cannibalism and the dismemberment of civilians...

[Rape in war destroys a whole generation: Dr Denis Mukwege on Yezidi genocide](#)

(RUDAW)

Dr Denis Mukwege is a world-renowned gynecologist and women's rights campaigner who

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founded the Panzi Hospital in Bukavu, Democratic Republic of Congo (DRC). Since 1999, Mukwege and his staff have cared for more than 50,000 survivors of sexual violence in the DRC's brutal conflict...

3 July

[Mass rape, cannibalism, dismemberment: U.N. team finds atrocities in Congo war](#)

(Reuters)

Rebels and government troops in Congo have committed atrocities including mass rape, cannibalism and the dismemberment of civilians, according to testimony published on Tuesday by a team of U.N. human rights experts who said the world must pay heed. The team investigating a conflict in the Kasai region of Democratic Republic of Congo told the U.N. Human Rights Council last week that they suspected all sides were guilty of war crimes and crimes against humanity...

2 July

[Civil society calls on the European Union to appoint a Special Representative for International Humanitarian law and International Justice \(CICC\)](#)

A group of civil society organizations are calling on the EU to establish a special representative to lead its work to promote compliance with international humanitarian law and seek justice for victims of Rome Statute crimes...On 29 June, 34 members of the European Parliament sent a letter to the EU High Representative for Foreign Affairs and Security Policy and Vice-President of the European Commission, Federica Mogherini, calling for her to urgently appoint an EU Special Representative for International Humanitarian Law and International Justice...

Quick links

The following are some useful research links:

- FICJ [Resource Library](#): research tools, best practice reports, commentaries and more
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- 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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