



# NEWSLETTER CRIMINOLOGY AND INTERNATIONAL CRIMES

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## EDITORIAL

There is something wrong with the ICC. I do not mean to discuss here the withdrawal by some African – and non-African – states from the ICC. As many people, as many opinions. For me it is clear that it is not always the facts that are most important; perceptions play an equally important role. With the perceived (and real) disrespectful way African leaders are treated by western powers as a recurring theme, in Africa at least, and the ICC being the lowest hanging fruit to send a symbolic message.

I mean, however, another issue, which also has to do with perception: the case before the ICC against Al Mahdi, found guilty of the war crime of intentionally directing attacks against historic monuments and buildings dedicated to religion, including nine mausoleums and one mosque in Tombouktou, Mali, in June and July 2012. This

case has quite often been presented as a great success story of the court. The first case dealing with the destruction of cultural heritage, with a short investigating phase, a guilty plea including a sentencing deal with the prosecutor, an extremely short trial, and sentencing accordingly. One year and a day between the arrest warrant and the sentence. The court can work efficiently, is the message.

However, one may seriously doubt whether this case had any impact. In Mali, very few people knew about this case nor have read the judgement, and those who knew wondered whether there were not more serious issues to deal with – for example the 80+ rape and other violence cases during the 2012-crisis, documented by civil society but still waiting for any action by the prosecutor in Mali itself.

The impact of the trial could have been far bigger when the Al Mahdi case would have been tried by the ICC in Mali. Mali could have been showcased as a strong supporter of the ICC and international criminal justice in general. As Mali also still houses some convicts from the ICTR.

The Al Mahdi case could have been a model for reaching out to the communities that were affected by the acts of the jihadists during the crisis. If in Mali, town hall meetings could have been held with Al Mahdi confessing and regretting in public what he was indicted for, and maybe even more acts. Everybody would have heard his story and why he regrets having taken part in the destruction of cultural heritage. Direct and indirect victims could have looked him in the eyes, asking questions, explanations.

Moreover, it could have saved a long – nine years – prison sentence. Mali is not a country of harsh sentencing. Prisons are quite open. More important is talking, confessing, discussing, reconciling. Nine years for the destruction of cultural heritage then seems quite a lot.

Instead, he was tried in The Hague, on another continent, thousands of miles away, hardly seen by anyone directly involved, without any public discussions about the moral aspects of what he did, or whatever other important issues. No discussion about the prison sentence: why nine years? Why not

for life? Or just one year? Or no prison sentence at all? Why not a sentence addressing reparation?

For those who argue that this would not have been possible considering the security situation in Mali, it may be interesting to know that the last day of November this year the trial against former general and – after a coup d'état – head of state Amadou Haya Sanogo and 17 co-accused started before the 'Cour d'Assises' of Bamako though sitting in Sikasso, a town in the south of the country. They are tried for the assassination of 21 members of the presidential guard in 2012, the so-called *red berets*, having dumped the bodies in a mass-grave afterwards.

This case is much more sensitive than the Al Mahdi case. There is room for 500 citizens in the court room, national television is reporting about the case as do all the papers, the progress is twittered around from minute to minute, among others by the ministry of Justice, discussed by each and every one, in the *grin*, at home or at work. The impact will be undeniable. Whereas the impact of the Al Mahdi case before the ICC in The Hague has been little more than zero, in Mali at least.

The Prosecutor of the ICC, Madame Fatou Bensouda, twittered on the occasion of the opening of the Sanogo trial in Mali that complementarity is at the centre of the ICC-system. And right she is. Justice should be seen by the people who are most affected. That is an important reason for international partners to assist the minister of Justice to bring back justice to the people in Mali in general, and to the northern part of the country in particular; to restore the rule of law in the country; to show that there is no impunity for criminal acts, pity crimes or mass killings alike. It would be an important step in this regard if the ICC, when trying crimes committed in Mali, would do this in Mali itself, adding to the restoration of the rule of law in Mali. When speaking about complementarity, there is more between the ICC in The Hague and local courts in the country affected.

**Roelof Haveman**

## AGENDA

1-3 December 2016, **Sixth Annual Conference of the Historic dialogues, justice and memory network**, NIOD, Amsterdam, website: <http://www.niod.knaw.nl/nl/activiteiten/sixth-annual-conference-historical-dialogues-justice-and-memory-network>

22-25 February 2017, **International Studies Association**, Baltimore, Maryland, Submissions

closed, website: <http://www.isanet.org/Conferences/Baltimore-2017>

Paris, 8-9 June 2017. **Transnational and Global Dimensions of Justice and Memory Processes in Europe and Latin America**. More info: <http://www.passes-present.eu/fr/les-projets-de-recherche/relations-au-passe/la-criminalisation-des-passes-dictatoriaux-en-europe-et#.WDbAKZlu7co>

9-13 July 2017, **International Association for Genocide Scholars (IAGS) Conference**, Brisbane Australia, Submission of Abstracts: 15 December 2016, Website: <https://law.uq.edu.au/iags2017>

New Delhi, 25-26 August 2017. **Philosophical Foundations of International Criminal Law: Its Intellectual Roots, Related Limits and Potential**. More info: [http://www.ficnl.org/fileadmin/ficnl/documents/161117\\_Philosophical\\_Foundations\\_Delhi\\_170825-26.pdf](http://www.ficnl.org/fileadmin/ficnl/documents/161117_Philosophical_Foundations_Delhi_170825-26.pdf)

13-16 September 2017, **European Society of Criminology (ESC)**, Cardiff, Wales, Website: <http://www.esc-eurocrim.org/index.php/conferences/upcoming-conferences>

*If you organize a conference, workshop or symposium related to international crimes, please inform us  
roelof.haveman@gmail.com  
and we will make a reference on our website and in the newsletter.*

## SHORT ARTICLES

**The Ironic Twist of Fate: Terror, Torture and Justice in the 9/11 Trial at Guantánamo Bay<sup>1</sup>**  
By Kjersti Lohne

Five men stand accused for planning the terrorist attacks on 11 September 2001 when al-Qaeda hijacked four planes and crashed them down into the West's collective memory. Nearly 3,000 people were killed that day. In its wake followed what we now refer to as the Global War on Terror, with US initiated military interventions in Afghanistan and Iraq, and other territories outside bounded and conventional theatres of warfare.

Since the first prisoners arrived in January 2002, the detention camp at Guantánamo has become a frightening symbol of the global War on Terror. It

<sup>1</sup> A similar version of this text was posted in the Norwegian newspaper Aftenposten.

is believed that at least 780 people from 40 different countries have been transported to and held in detention at the US naval base in Cuba. At the intersection of Cuban sovereignty and American territorial control, Guantanamo Bay operates in legal grey areas where endangered iguanas are better protected by US law than its prisoners. This applies not only to the controversial detention camps, but also to the military commissions where the justice process for September 11 attacks takes place. This summer, I was granted access to the US naval base in Guantánamo Bay in order to observe two weeks of pre-trial hearings in the 9/11 case.

#### *Terror vs. torture*

The publication of the Senate's Committee Study of the Central Intelligence Agency's Detention and Interrogation Program in 2014 revealed that US intelligence officials' use of torture and secret CIA prisons – so-called black sites – were far more widespread than previously assumed. One of the accused and the alleged mastermind behind the 9/11 attacks, Khalid Sheik Mohammed, was subjected to the 'enhanced interrogation technique' known as waterboarding 183 times in a secret CIA black site in Poland. He was most likely captured together with one of his co-defendants Mustafa al-Hawsawi, who sat on a pillow the few times he chose to be present during commission hearings. The torture that al-Hawsawi was subjected to included penetration of foreign objects into his rectum – carried out with 'excessive force'. Due to a lack of adequate medical care, al-Hawsawi has since suffered from anal prolapse, and have had to manually insert this part of his body after having been to the toilet. According to his defence lawyers, the pain that this has caused him has made him have to minimize his eating. In the 'Expeditionary Legal Complex' – the temporary courtroom facilities set up on 'Camp Justice' at the base – sat a man of about 50 kilograms. His defence lawyers believe that his condition and the circumstances he is detained under still amounts to torture. Only last month – after ten years at Guantánamo in this condition – did al-Hawsawi receive surgery for damage caused by CIA while in US custody.

There are few who believe that someone will be held accountable for what is commonly referred to as the US' 'unconventional warfare'. However, the violence perpetrated in the name of counter-terrorism has become intricately entangled in the 9/11 pre-trial proceedings in the military commissions. Despite the publication of what is widely referred to as the CIA torture report, large parts of the document remains redacted and classified. This also applies to information that is relevant for the justice proceedings and the five defendants.

#### *Evidence is classified and destroyed*

Because the prosecution constantly invokes national security, the defendants' possibilities to refute accusations are extremely restricted in the military commissions due to non-disclosure of evidence. During hearings this summer, it became clear that the judge had permitted the destruction of evidence otherwise believed to be of use as mitigating by the defendants. What the evidence consisted of remains classified, but it is believed to be related to one of the CIA 'black sites'. Independent of whether you call it civil or military justice, destruction of evidence strikes at the heart of fundamental principles of a fair trial.

Unfortunately, this is only one of many violations of fair trial rights of the accused: computers and confidential communication between lawyers and clients have been seized and monitored; smoke detectors in meeting rooms have hidden surveillance gear, too many defence lawyers' homes have been broken into... A couple of years ago, the FBI infiltrated one of the defence teams by recruiting informers among them. Last year, it also became clear that one of the defendants' translators d previously worked as a CIA translator – the defendants recognized him from one of the black sites. It is also believed that the CIA – and not the military commissions – control the flow of information out from the courtroom and into the military 'public' gallery where those observing the proceedings are sitting.

#### *Judicial processes beyond the rule of law*

Khalid Sheik Mohammed, Walid bin Attash, Ramzi bin al Shibh, Ammar al Baluchi and Mustafa Ahmad al Hawsawi are charged neither by a civilian criminal court nor by an ordinary court-martial, but face the death penalty in a specially created military court. In other words, the justice process after September 11 takes place beyond the confines of the ordinary rule of law. The US Supreme Court has found a previous version of the military tribunals at Guantánamo unconstitutional, and the current version is number three in the series. Although the rights of the accused are somewhat strengthened now – the defendants have access to lawyers in today's version – the military commissions' legitimacy remains a highly contentious issue. Human rights activists and international lawyers consistently reject the jurisdiction of the Guantánamo military commissions, and believe that the accused should be prosecuted by civilian – and not military – courts.

Whether or not the military commissions at Guantánamo – including its rulings and potential

convictions – will stand the test of time remain to be seen: the jurisdiction of these military commissions have not been dealt with by the US Supreme Court, for instance. Such legal instabilities add insult to injury for those awaiting justice in the form of final convictions and executions, such as some of the 9/11 victims' family members. Chances are they may also be waiting in vain. Fifteen years after September 11, the proceedings are caught in a legal quagmire on everything from the judge's impartiality to poison gases at Camp Justice, which houses the temporary court rooms and the court observers. The trial is not expected to actually begin until sometime in the 2020s, if it gets going at all. Meanwhile, the five defendants are detained for at the least their tenth year at Guantánamo Bay in a secret detention facility restricted to independent access from UN observers.

This 'justice' process can be understood as a result of a fundamental contradiction: that between government efforts to prevent disclosure of the crimes they themselves have committed in the war on terror on the one hand, and defence lawyers' struggle to defend their clients' fundamental rights to a fair legal process on the other. As in any justice process, there are opposing interests, but the victims' – and the public's – need for justice after the 9/11 attacks are stacked up against a judicial process that is not possible to conduct as a fair trial.

Of the few people that are allowed to board the plane to the legal drama that unfolds at Camp Justice, half of them are there to observe a justice process about September 11 – the other half is there to observe a process on the use of torture. It is by an ironic twist of fate that the justice process after September 11th has become a forum where not only judgment will be passed on terrorism, but also on the global War on Terror.

### **Renegotiating Justice for International Crimes in Colombia**

**By Lily Rueda**

The second semester of 2016 was decisive for the peace process between the Government of Colombia and the FARC-EP: a comprehensive peace agreement was achieved in September only to be rejected one month later in a plebiscite by a narrow margin (0,4%). The lack of prison terms for guerrilla members angered many and contributed to this outcome. While this was a subject of heated debate, it was far from the only controversial matter, as there were other topics such as the political participation of the FARC-EP, rural reform and the scope of the gender-based approach. The plebiscite showed a high degree of polarization. However, after, President Santos received the

Nobel Peace Prize and, in a somewhat surprising turn of events, a renegotiation phase was opened and a new peace agreement was concluded only forty days later. The new accord was formally signed on 24 November and presented to Congress, which endorsed it one week later. While the text of the second agreement and its ratification by Congress rather than by plebiscite remain controversial, implementation of the agreement has now begun. In this commentary I present the main issues on criminal accountability which were renegotiated and some of the challenges that remain open.

The basic principles of the comprehensive system of transitional justice and of the Special Jurisdiction for Peace (SJP) were maintained. The realisation of the victims' rights to justice continues to be envisaged through the granting of amnesties and pardons for political crimes and by the prosecution and sanction of those considered the most responsible for international crimes, including FARC-EP members, state agents and third parties. The restorative nature of the sanctions and the regime labelled as "effective restrictions of liberty", through which these sanctions will be implemented, were also conserved. In order to obtain more support for this second agreement, the FARC-EP agreed to further precisions on how the "effective restriction of liberty" will take place. Execution of the restorative sanctions must now take place within judicially-specified geographic boundaries and must follow specific timetables (p.165-166). While the sanctions are being executed, the place of residency of those subject to them will also be judicially determined. In addition, the fulfilment of the sanctions will be monitored by the UN Monitoring and Verification Mission. Furthermore, the entire special punitive scheme continues to be conditional on the perpetrators' participation in other non-judicial mechanisms, such as the Truth Commission.

Although the general transitional justice scheme did not fundamentally change, there are four significant modifications. Firstly, the transitional justice system will now have specific points of connection with, and, to some extent, of control by, the ordinary justice system. On this point, the FARC-EP have conceded a lot more than one would have expected, especially considering that initially, they were not willing to accept any sort of recognition or submission to ordinary and pre-established judicial authorities. It has also now been clarified that the SJP will have a temporal nature and limited scope (p.129). In practice, it will have 15 years to conclude all judicial activities (p.145). The SJP will also apply substantive ordinary Colombian criminal law and international law (p.147). However, in terms of procedural law, the jurisdiction will create

its own norms, whilst following due process and fair trial principles (p.153). Furthermore, some procedural mechanisms were included to curtail certain powers of the new magistrates, including a special procedure to solve jurisdictional conflicts (p.144) and the possibility of using amparo proceedings (p.160).

Secondly, there are now two additional mechanisms to facilitate the fulfilment of victims' rights, which also represent additional concessions from the FARC-EP. In the first place, the FARC-EP have agreed to provide the Government with an inventory of all their assets (p.186) to be used for the material reparation to victims. It was also agreed that the Government, with assistance from the FARC-EP, will undertake a special humanitarian process in order to gather and provide information regarding the search, location, identification and return of the remains of disappeared persons. This process will include cooperation from victims' organizations and the International Committee of the Red Cross in a coordinating role.

Thirdly, one major point of controversy was how drug-trafficking could be considered to fall within the definition of a crime connected to political crimes, and would thus be eligible for special legal treatment. Several proposals from the opposition pushed for explicitly banning the possibility of any amnesties or pardons for this conduct. While no such ban resulted from the renegotiation, further clarification was provided. The parties agreed that the ordinary legal criteria established in Colombian case law shall be used to determine what crimes are considered 'connected' to political crimes (p.150). Furthermore, a clarification was included to explain what constitutes the act of funding the rebellion. There now is wording specifying that acts which did not result in the personal enrichment of the rebels, and which did not amount to international crimes, could be considered as directed towards funding the rebellion (p.151).

The final modification of the transitional justice system concerns a new provision on the attribution of liability to FARC-EP commanders for the actions of their subordinates (p.152). This new clause sets out that a standard for judging a superior's "effective control of the respective conduct" of his or her subordinates will be that as defined by article 28 of the Rome Statute (RS). This new provision is problematic for a number of reasons. This mode of liability is foreign to Colombian criminal practice and, under the current Colombian constitutional framework, the RS cannot be directly applied to criminal cases. Furthermore, this inclusion generates a double standard on how to assess a superior's responsibility given that it

will not be applicable to military commanders. This may affect the rights of fair trial and equality of the defendants.

As it was the case with the justice chapter, the general accord was modified in matters related to comprehensive rural reform, provisions for the definitive ceasefire and solutions to the illicit drug problem. The only item on which the FARC-EP did not fundamentally concede was on their future political participation. According to the terms of the agreement, within five months the FARC-EP will be completely demobilized and all their weapons will be delivered to the United Nations. This process has now started. While the political opposition's claims for a new plebiscite are probably going to be dismissed, the conclusion of this peace process still faces legal and political challenges.

From the legal perspective, the constitutional and legal reforms needed for the implementation of the accord were to be conducted through a "fast track" procedure, which would have allowed their discussion and approval within the Congress in only six months. This procedure was nonetheless designed to be conditional on the popular endorsement of the peace agreement. The Constitutional Court will now decide on whether the "fast track" procedure could be used, for instance, through the interpretation of the Congressional endorsement as an indirect and representative popular validation. If the Constitutional Court nonetheless attaches the "fast track" to a popular vote, the legislative measures will have to be introduced following ordinary procedures, which might cause delays and substantive changes by Congress. From the political perspective, this "new" agreement is not as robust and sustainable as it would have been, had it been approved by popular voting. There will be a presidential election in 2018. An opposition now emboldened by the outcome of the plebiscite earlier this year might conduct its campaign on a platform against the peace agreement and, should they prevail, the agreement with the FARC-EP will be at risk.

## **A Criminal Court of Public Opinion**

### **By Thijs Bouwknecht**

In recent months, South Africa, Burundi and the Gambia have terminated their membership of the International Criminal Court (ICC). Observers and academics alike have narrowly portrayed this walkout as an 'African' exodus and an 'African' problem. But what about Vladimir Putin's 'unsigned' of the Rome Statute and Rodrigo Duterte's pledge to follow suit?

Maybe the slowdown is not stopping there. After Prosecutor Bensouda named and shamed US military personnel and CIA agents over alleged torture in Afghanistan, Poland, Lithuania and Romania in her latest preliminary examination report, Donald Trump's upcoming administration may very well join the chorus and call the Rome Statute "really bad" or the "worst treaty ever signed by Bill Clinton."

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

Since its inception, the ICC has been fighting forces trying to undermine its being. And indeed, so far, the ICC's magistrates have condemned more persons for obstructing its rendering of justice than for grave human rights violations. Although only future historians can tell whether the withdrawals heralded the death of the ICC dream towards universal justice and peace, these votes-of-no-confidence expose the permanent court's principal weakness: its legitimacy and existence ebbs and flows on political tides. And these days, human rights, justice and equality are no longer popular tropes among populists and their constituencies around the world.

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

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

the Central African Republic have called in the assistance of the ICC Prosecutor.

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

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

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

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

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

Evidently, the ICC itself is not 'targeting' Africans specifically, as its critics like to allege. It has real and genuine reasons to judge criminals against humanity. But the court has failed to convincingly, credibly and in a non-legalised manner explain to

publics across the continent why the 20 suspects who appeared before its judges in the past decade all came from Africa and not from, say, Colombia.

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

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

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

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

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

## **Bolstering the International Criminal Court by Facing its Challenges**

**By Marieke de Hoon<sup>2</sup>**

Although international criminal justice and the ICC by no means work as a perfect instrument, the developments in this field since the 1990s has broken through deeply engrained understandings of state sovereignty and jurisdictional immunity in international law and relations. While limited in scope and jurisdiction, and still struggling with what limitations of immunity is acceptable to states, there is now more attention and wider condemnation not only for atrocities that take place elsewhere but also for the lack of action to intervene and punish those responsible, international courts have been created, national systems act against foreign and own (previous) leaders, and a new field of studies sparked a still increasing amount of interest. Nevertheless, the ICC – as quintessential exponent of this development – is hardly ever seen in such positive light or celebrated as a great success.

To the contrary, the legitimacy of the ICC has been increasingly challenged. These challenges include that the Court and its prosecutorial office are continuously object of legal and political criticism and for failing to prosecute more expeditiously. That there is a discrepancy between what victims hope to find in terms of justice and what the Court is able to offer. That the accession to the ICC has come to almost a standstill. That for many years, tensions between African and 'Western' states intensified during the annual Assembly of States Parties (ASP) diplomatic conventions. That a number of states have either withdrawn (Burundi, South Africa and Gambia, although the new president of the latter announced earlier this week that it will stay) or are considering to do so (such as Kenya, Namibia, Philippines and Uganda) and may, in their calls upon other states to follow suit, unleash an undermining chain reaction. And that the African Union meanwhile adopted several anti-ICC resolutions and continues to welcome one the ICC's most prominent indictees, the Sudanese President Omar al-Bashir, to its summits.

The loss of legitimacy of the Court is worrisome. Justice mechanisms, including criminal law trials, function only by the grace of legitimacy. Without it, justice is not recognized as such, nor accepted, and the exercise becomes futile. Moreover, not acceding to and even withdrawing from the ICC signifies a rejection of the idea that international criminal

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justice is universal. These existential features of international criminal justice – legitimacy and universality – are therefore fundamentally challenged by those whom the Court seeks to champion and by states that have in the past fought to create the Court. This is problematic. Foremost because the Court has the potential to contribute in very important and even essential manner to the promotion of respect for and enforcement of human rights and international peace and security.

In the past years, Western states and the ICC itself have often responded with annoyance to the critique and mostly tried to refute or nuance the criticism and explain the blessings of the Court yet again. This is partly understandable: the criticism by African states cannot always be separated from the self-interest of leaders such as Bashir. Notwithstanding, it is misguided and unfair to dismiss the critique from victims and African communities and states as mere misunderstanding or propaganda for criminal leaders. The critique goes deeper than that, and, I argue, is rooted in i) an oversimplification and unhelpful generalization of what justice means for different people and societies in different conflicts and circumstances, and the related inability to ‘deliver’ justice in a one-size-fits-all and top-down manner, and ii) a misconception of what a criminal trial is able to do and not do, and that the trial would be able to address all or even sufficiently the far wider range of needs that affected communities and victims have. Moreover, iii) what underlies the critique exposes a misunderstanding that international criminal justice is and could in some way be detached from political decision-making, choice and prioritization.

During the past weeks in November, the world came together in The Hague for the ICC’s annual diplomatic meeting, the ASP. Given the above described problems, it was clear that this session would be crucial for the ICC’s future and its place in the geopolitical constellation. Not surprisingly therefore, the main theme of this year’s ASP was the (African) critique, cooperation and complementarity. The past ASP sessions had shown an increasing polarization between those that seem to focus exclusively on the importance of the Court and those that denounce it as a ‘racist vehicle’. Constructive and valid critique was mostly marginalized, ignored and left unaddressed. A number of (African) states felt not taken seriously, with proposals to address their concerns not even reaching the ASP’s agenda. They responded increasingly with protest, culminating in this autumn’s withdrawals.

However, as Kjersti Lohne and I wrote in EJIL Talk! last week, this year’s ASP showed a

remarkable turn of attitude, language, tone and body language by representatives of the ICC and most state delegations. It was open, respecting and mature, while ‘constructive’, ‘dialogue’ and ‘common ground’ became this year’s sound-bites. The ICC itself also chose a strikingly different approach this year. Throughout the ASP, they were visibly more present than other years, and they repeatedly brought a message of adjusting expectations, understanding the political and legal reality and limitations, and opening up to reflection.

This year’s ASP therefore broke decidedly with the old polarization and appeared to genuinely search for a way to engage critically, open and constructively. It remains to be seen how this will turn out, and whether there is sufficient political will to refrain from solely focusing on short-term solutions. There are fundamental challenges that underlie the international criminal justice project, that, as noted above, I argue lie in i) an oversimplification of what ‘justice’ is, ii) an overestimation of what a trial can bring in terms of addressing victims’ needs, and iii) a misunderstanding that the realization that law and justice is (also) political doesn’t mean that it has to be arbitrary or non-legal. In order to strengthen its legitimacy, it is important to analyse and critically engage with what underlies the critique, the possible withdrawal of states from the ICC, the reluctance to join by others, the ICC’s challenges of meeting victims’ needs, and the high expectations and many objectives that the ICC struggles to meet. Moreover, it is important to constructively reflect on what this means for how to move forward and how to allow the ICC to function within its abilities without failing to meet expectations it was and will never be able to meet. Only then can the ICC be at its best, within the geopolitical, jurisdictional and financial realities it faces, and will it accordingly stand a chance to fight for expanding its reach on each and every one of these realities.

## A LETTER FROM GAZIANTEP

By Ugur Ümit Üngör<sup>3</sup>

In December 2015, I travelled to the Turkish-Syrian border to conduct my fieldwork on the dynamic of the Syrian conflict. As bombs were raining on nearby Aleppo, in the back of my mind were Powdermaker’s famous 1966 words: “Fieldwork is a deeply human as well as a scientific experience.” The trip turned out to be exactly that: intellectually and emotionally it was a fundamentally different experience from the archival research I was used to.

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<sup>3</sup> Dr. Ugur Ümit Üngör, Utrecht University and NIOD Amsterdam.

Reading a series of written documents does not compare to interacting with eye witnesses to violence, humans of flesh and blood. At once satisfying and straining, the fieldwork brought me into unique contacts with ideas and people that opened up new vistas in many ways.

Gaziantep, a city mostly famous for its culinary richness, was covered in a rare snow blanket that seemed more ominous than festive. This was certainly also because famous Syrian journalist Naji al-Jerf was assassinated in front of my hotel a day before I checked in. I found in Gaziantep two parallel societies entirely: a Turkish one and a Syrian one, each with its own economy, media, mosques, cuisine, space, relationships, dreams, expectations; and minimal interaction between them. As I crossed from Turkish Gaziantep into Syrian Gaziantep and back, I would be the only 'Turk' in the Syrian restaurants, and the only 'Dutchman' in the Turkish living room – a permanent trespasser.

I plough through the snow, meeting interviewees who are willing and able to talk about their experiences in Syria. Hanging on a corner waiting for a contact, I look at so many men passing by, people might start thinking I'm gay. I conduct ethnographies in Syrian cafés, which always means washing the cigarette smell out of my clothes the next morning. I notice that Syrians say 'he' or 'him' without specifying who he is ("he is bombing Aleppo; he arrested my cousin"), but everyone understands very well who this 'he' is, evidently so powerful he does not even need to be named. I notice that when you express much detailed knowledge about the conflict, Syrians can come to think you might be working for the feared mukhabarat (Assad's secret service). So sometimes, I play dumb: "Oh really? Assad's militias in Aleppo are run by businessmen? I never knew that. Tell me more about it."

The fieldwork forced me to think about issues of (im)possibilities and trust, principles of 'do-no-harm', informed consent, confidentiality, anonymity, data production and data protection. But who should and can be interviewed in this ongoing conflict? My high school physics teacher would say, "if you want to see a star, don't look straight into it, look right next to it, you'll see it better". The point also holds true for violence. And so I spoke less with the actual committers of violence, and more with their close friends, acquaintances, neighbours, and direct family. I drink (too much) coffee with activists, revolutionaries, journalists, fence-sitters, humanitarian workers, war profiteers, and many others. The revolutionaries turn out to be a good source, because they suffered regime pursuit

and violence the most, and they are often quite eloquent and well-educated.

Since I meet Syrians who are pro-Assad and anti-Assad, atheists as well as Islamists, I continuously adapt my attitude and sense of humour, learning their jargon, and occasionally practicing taqiyya (precautionary dissimulation of my real religious beliefs and political ideas). I observe that the atheists I encounter seem more psychologically unstable than the religious Syrians, and I'm not sure why. Perhaps it is because they have consolation and believe in the idea of the just (after)world. Rigid secularists often orientalise the latter group as backward, but clearly religion is helping them cope with Syria's immense suffering. Their religiosity seems to be a response to victimization and survivor guilt. "Why does God allow this suffering to happen?" I ask one of my interviewees, a young man from the northern town of al-Bab. He smiles, glances up and responds: "If we can't live with dignity, he will at least allow us to die with it."

## CONFERENCES

### **The Women in and at War conference By Laetitia Ruiz<sup>4</sup>**

The biennial Women in and at War conference took place in Milton Keynes, UK on 15<sup>th</sup> and 16<sup>th</sup> of September 2016. The conference organisers issued a call for papers on the general theme of Women, Peace and Security to commemorate the first eponymous UN Security Council resolution (UNSC Resolution 1325) adopted a little over ten years ago and take stock of developments in this field since 2000. The conference brought together scholars and practitioners from various disciplines, with legal scholars nevertheless forming a significant part of the group.

Over the two days of the conference, the multiplicity of women's roles in, and experiences of, conflict was addressed. Such acknowledgment came in the form of examinations of legal advances and remaining questions regarding the prosecution of sexual violence against women, the experiences of women during the Troubles in Northern Ireland, their experiences living under the rule of ISIS, and in post-conflict Sri Lanka, Niger-Delta Nigeria, Sierra Leone and Liberia. The use (and possibly abuse) of women's experiences for communication purposes was also tackled in the context of the 'war on terror' and NATO's intervention in Afghanistan. Finally, one presentation revolved exclusively around female perpetrators of violence, with a

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<sup>4</sup> Tilburg University, the Netherlands

specific focus on the former Yugoslavia and Rwanda.

Several presentations went beyond the original focus of the conference. A number of presentations urged for a much wider understanding of 'gender' than commonly accepted, i.e. gender as synonymous of 'women'. Even though numerous scholars have called for such broadening, law and policy at the national and international levels have continued to design and implement programs aimed at, for example, addressing 'gender-based violence' when in reality these programs have attempted to remedy violence against women. Presenters denounced this enduring misconception of gender through calls to extend it to genuinely encompass the victimization of men and members of the LGBTI community. In particular, presenters argued for the inclusion of male and LGBTI victims in debates about sexual violence, including with respect to the Women, Peace and Security agenda and to prosecutions before the International Criminal Court.

The very name of the conference and the chosen theme for this year could have misled interested parties into thinking that the exclusive focus of the conference would be placed on women as actors and/or victims of conflict. Not that such focus is unwarranted, but rather anyone versed in the analysis of conflict situations may view it as restrictive. Fortunately, the conference became a forum for discussions on gender, rather than strictly on women. It broke away with traditional thinking about gender and conflict and offered a stimulating environment within which to discuss these issues.

On a final note, the good atmosphere that permeated the conference from start to finish also contributed to its success. Anyone working on the thematic of gender in conflict can only benefit from attending the next conference (in 2018!).

## SELECTED NEW PUBLICATIONS

*The editors selected some books which they think you might want to read. If you have any suggestions, please send this to roelof.haveman@gmail.com*

**Ankumah, Evelyn A. The International Criminal Court and Africa. Intersentia, 2016.**

More than ten years ago the International Criminal Court (ICC) was established as a universal court meant to achieve criminal justice worldwide. That goal still stands, but so far the Court has dedicated

most of its time and resources to African conflicts in which international crimes have been committed.

While the ICC can be said to contribute to criminal justice in Africa, it cannot be denied that the relationship between the Court and the continent has been troublesome. The ICC has been accused of targeting Africa, and many African states do not seem willing to cooperate with the Court. Debates on Africa and international criminal justice are increasingly politicised.

The authors of this volume all recognise the current problems and criticism. Yet they do not side with populist pessimists who, after just over a decade of ICC experiences, conclude that the Court and international criminal justice are doomed to fail. Rather, the contributors may be regarded as cautious optimists who believe there is a future for international criminal justice, including the ICC. The contributors use their unique specific knowledge, expertise and experiences as the basis for reflections on the current problems and possible paths for improvement, both when it comes to the ICC as such, and its specific relationship with Africa.

**Damsgard, P. The ISIS hostage – one man's true story of 13 months in captivity. Allen & Unwin 2016.**

The dramatic story of freelance photographer Daniel Rye, who was held hostage for thirteen months by ISIS, as told by an award-winning writer. In a tense and riveting narrative, *The ISIS Hostage* details freelance photographer Daniel Rye's thirteen-month ordeal at the hands of Islamic State after he was captured in Syria and the misery inflicted upon him, and nineteen other hostages, by the British guards, which included Jihadi John.

This compelling account also follows Daniel's family and the nerve-wracking negotiations with his kidnappers. It traces their horrifying journey through impossible dilemmas and offers a rare glimpse into the secret world of the investigation launched to locate and free not only Daniel, but also the American freelance journalist and fellow hostage James Foley.

Written with Daniel's full cooperation and based on interviews with former fellow prisoners, jihadists and key figures who worked behind the scenes to secure his release, *The ISIS Hostage* reveals for the first time the torment suffered by the captives and tells a moving and terrifying story of friendship, torture and survival.

**Erelle, A. In the skin of a jihadist – a young journalist enters the ISIS recruitment network. Harper Collins Publishers, 2015.**

A young French journalist's riveting and unprecedented look at how today's most ruthless terrorists use social media and technology to reach disaffected youth, witnessed through the undercover investigation that led to her deep involvement with a key member of ISIS. On Facebook, 'Melodie' a twenty-year-old-convert to Islam living with her mother and sister in Toulouse, meets Bilel, a French-born, high-ranking militant for the Islamic State in Syria. Within days, Bilel falls in love with Melodie, Skypes her repeatedly, and adamantly urges her to come to Syria, marry him, and do jihad. The honey-tongued suitor promises the innocent, fatherless young girl a life of material comfort and spiritual purpose.

But Melodie is actually Anna Erelle, a Parisian based journalist investigating the recruitment channels of the Islamic state, whose digital propaganda – Jihad 2.0 – constitutes one of its most formidable and frightening weapons, successfully mobilizing increasing numbers of young Europeans.

In this taut and riveting true story, Erelle chronicles her intense, month-long relationship with Bilel who turns out to be none other than the right hand man of Abou Bakr al-Baghdadi, the self-proclaimed caliph of ISIS. Impatient for Melodie to join him, Bilel tells her that, according to an imam, they are already all but married, and will be officially when she arrives in Syria. As she embarks on the final, most dangerous stage of her investigation, Melodie leaves for Amsterdam to begin her journey to the Middle East. But things go terribly wrong.

A gripping and often harrowing inquiry into the factors that motivate young people to join extremist causes, and a shocking exploration of how technology and social media are spreading radicalism, *The Mind of a Jihadist* is a riveting page-turner that helps us better understand the appeal of extremism, and how an Islamic militant attempts to brainwash, seduce, and manipulate a vulnerable young woman.

**Gerges, F.A. A history of ISIS. Princeton University Press, 2016.**

The Islamic State has stunned the world with its savagery, destructiveness, and military and recruiting successes. What explains the rise of ISIS and what does it portend for the future of the Middle East? In this book, one of the world's leading authorities on political Islam and jihadism sheds new light on these questions as he provides a

unique history of the rise and growth of ISIS. Moving beyond journalistic accounts, Fawaz Gerges provides a clear and compelling account of the deeper conditions that fuel ISIS. The book describes how ISIS emerged in the chaos of Iraq following the 2003 U.S. invasion, how the group was strengthened by the suppression of the Arab Spring and the subsequent war in Syria, and how ISIS seized leadership of the jihadist movement from Al Qaeda.

Part of a militant Sunni revival, ISIS claims its goals are to resurrect a caliphate and rid "Islamic lands" of all Shia and other minorities. In contrast to Al Qaeda, ISIS has focused, at least so far, on the "near enemy" – Shia, the Iraqi and Syrian regimes, and secular, pro-western states in the Middle East.

Ultimately, the book shows how decades of dictatorship, poverty, and rising sectarianism in the region, exacerbated by foreign intervention, led to the rise of ISIS – and why addressing those problems is the only way to ensure its end. An authoritative introduction to arguably the most important conflict in the world today, this is an essential book for anyone seeking a deeper understanding of the social turmoil and political violence ravaging the Arab-Islamic world.

**Hinton, Alexander. 'Man or Monster. The Trial of a Khmer Rouge Torturer. Duke University Press, 2016.**

During the Khmer Rouge's brutal reign in Cambodia during the mid-to-late 1970s, a former math teacher named Duch served as the commandant of the S-21 security centre, where as many as 20,000 victims were interrogated, tortured, and executed. In 2009 Duch stood trial for these crimes against humanity. While the prosecution painted Duch as evil, his defence lawyers claimed he simply followed orders. In *Man or Monster?* Alexander Hinton uses creative ethnographic writing, extensive fieldwork, hundreds of interviews, and his experience attending Duch's trial to create a nuanced analysis of Duch, the tribunal, the Khmer Rouge, and the after-effects of Cambodia's genocide. Interested in how a person becomes a torturer and executioner as well as the law's ability to grapple with crimes against humanity, Hinton adapts Hannah Arendt's notion of the "banality of evil" to consider how the potential for violence is embedded in the everyday ways people articulate meaning and comprehend the world. *Man or Monster?* provides novel ways to consider justice, terror, genocide, memory, truth, and humanity.

**Kersten, Mark. Justice in Conflict. The Effects of the International Criminal Court's**

**Interventions on Ending Wars and Building Peace. Oxford University Press, 2016.**

What happens when the international community simultaneously pursues peace and justice in response to ongoing conflicts? What are the effects of interventions by the International Criminal Court (ICC) on the wars in which the institution intervenes? Is holding perpetrators of mass atrocities accountable a help or hindrance to conflict resolution? This book offers an in-depth examination of the effects of interventions by the ICC on peace, justice and conflict processes. The 'peace versus justice' debate, wherein it is argued that the ICC has either positive or negative effects on 'peace', has spawned in response to the Court's propensity to intervene in conflicts as they still rage. This book is a response to, and a critical engagement with, this debate.

Building on theoretical and analytical insights from the fields of conflict and peace studies, conflict resolution, and negotiation theory, the book develops a novel analytical framework to study the Court's effects on peace, justice, and conflict processes. This framework is applied to two cases: Libya and northern Uganda. Drawing on extensive fieldwork, the core of the book examines the empirical effects of the ICC on each case. The book also examines why the ICC has the effects that it does, delineating the relationship between the interests of states that refer situations to the Court and the ICC's institutional interests, arguing that the negotiation of these interests determines which side of a conflict the ICC targets and thus its effects on peace, justice, and conflict processes.

While the effects of the ICC's interventions are ultimately and inevitably mixed, the book makes a unique contribution to the empirical record on ICC interventions and presents a novel and sophisticated means of studying, analyzing, and understanding the effects of the Court's interventions in Libya, northern Uganda - and beyond.

**Kesselring, Rita. Bodies of Truth. Law, Memory, and Emancipation in Post-Apartheid South Africa. Stanford University Press, 2016.**

Bodies of Truth offers an intimate account of how apartheid victims deal with the long-term effects of violence, focusing on the intertwined themes of embodiment, injury, victimhood, and memory. In 2002, victims of apartheid-era violence filed suit against multinational corporations, accusing them of aiding and abetting the security forces of the apartheid regime. While the litigation made its way through the U.S. courts, thousands of victims of gross human rights violations have had to cope with painful memories of violence. They have also

confronted an official discourse claiming that the Truth and Reconciliation Commission of the 1990s sufficiently addressed past injuries. This book shows victims' attempts to emancipate from their experiences by participating in legal actions, but also by creating new forms of sociality among themselves and in relation to broader South African society.

Rita Kesselring's ethnography draws on long-term research with members of the victim support group Khulumani and critical analysis of legal proceedings related to apartheid-era injury. Using juridical intervention as an entry point into the question of subjectivity, Kesselring asks how victimhood is experienced in the everyday for the women and men living on the periphery of Cape Town and in other parts of the country. She argues that the everyday practices of the survivors must be taken up by the state and broader society to allow for inclusive social change in a post-conflict setting.

**Khalaf, F. & A.C. Hoffman. The girl who escaped from ISIS: this is my story. Atria Books, 2016.**

A young Yazidi woman was living a normal, sheltered life in northern Iraq during the summer of 2014 when her entire world was upended: her village was attacked by ISIS. All of the men in her town were killed and the women were taken into slavery.

**Klip, André, Steven Freeland, Anzinga Low. Annotated Leading Cases of International Criminal Tribunals - volume 48. The International Criminal Tribunal for the Former Yugoslavia 26 February 2009 – 21 July 2009. Intersentia, 2016**

This forty-eighth volume of the Annotated Leading Cases of International Criminal Tribunals contains decisions taken by the ICTY in the year 2009. It provides the reader with the full text of the most important decisions, identical to the original version and including concurring, separate and dissenting opinions. Distinguished experts in the field of international criminal law have commented on the decisions.

Contributors: Kerstin Bree Carlson, Caroline Fournet, Håkan Friman, Bridget Kennedy, Karin Traunmüller and Manuel Ventura.

**Malcontent, Peter. Facing the past. Intersentia, 2016.**

How do societies at the national and international level try to overcome historical injustices? What remedies did they develop to do justice to victims

of large scale atrocities? And even more important: what have we learned from the implementation of these so-called instruments of transitional justice in practice?

Lawyers, social scientists and historians have published shelves full of books and articles on how to confront the past through international criminal tribunals, truth commissions, financial compensation schemes and other instruments of retributive/punitive and restorative justice. A serious problem continues to be that broad interdisciplinary accounts that include both categories of measures are still hardly available.

With this volume a group of international experts in the field endeavours to fill this gap, and even more. By alternating historical overviews with critical assessments this volume does not only offer an extensive introduction to the world of transitional justice, but also food for thought concerning the effectiveness of the remedies it offers to face the past successfully.

**Marone, Andrea. The Governance of Complementary Global Regimes and the Pursuit of Human Security. The Interaction between the United Nations and the International Criminal Court. Intersentia, 2016.**

This book offers an overview of the challenges in the emerging regime of international criminal justice as a tool of sustainable peace. It illustrates the impact of the regime on international law and international relations, focusing on the obstacles to and concerns of its governance in the context of the maintenance and restoration of international peace and security.

The author advocates for an appropriate interaction strategy between the United Nations and the Rome Statute institutions as a matter of international mutual concern and for the sake of human security. In multiple and inter-linked country situations the failure of strategies to prevent mass atrocity crimes have severely compromised the safety of civilians, including their individual fundamental rights. In several countries - such as in Libya, Syria, Sudan, Democratic Republic of Congo, Uganda, Kenya, Central African Republic, Ivory Coast and Mali - civilians have severely suffered the consequences of such failure. Furthermore, the right of humanitarian intervention that it is sometimes claimed the international community has is now challenged and qualified by the responsibility to protect civilians in situations of mass atrocity crimes. Such an international norm represents unfinished business in global politics and is considered by many to be far from capable of preserving the rule of international law. The

preservation of the rule of law requires discussions and the advocacy of global values in international relations, such as multilateralism, collective responsibility, global solidarity and mutual accountability.

**Nawaz, M. Radical – My journey out of Islamist Extremism. Guilford, 2016.**

Born and raised in Essex, Maajid Nawaz was recruited into politicised Islam as a teenager. Abandoning his love of hip hop music, graffiti and girls, he was recruited into Hizb ut-Tahrir (the Liberation Party) where he played a leading and international role in the shaping and dissemination of an aggressive anti-West narrative. While studying for his Arabic and law degree, he travelled around the UK and to Denmark and Pakistan, setting up new cells.

Arriving in Egypt the day before 9/11 his views soon led to his arrest, imprisonment and mental torture, before being thrown into solitary confinement in a Cairo jail reserved for political prisoners. There, while mixing with everyone from the assassins of Egypt's president to Liberal reformists, he underwent an intellectual transformation and on his release after four years, he publically renounced the Islamist ideology that had defined his life. This move would cost him his marriage, his family and his friends as well as his own personal security.

Six years after his release, Maajid now works all over the world to counter Islamism and to promote democratic ideals through his organisation, The Quilliam Foundation, which he co-founded with former Islamist and bestselling author Ed Husain. Following in the wake of the extraordinary democratic change in the Arab world, that few would have foretold, Radical is Maajid's intensely personal account of life inside and out of Islamic extremism. It also highlights one man's quest to inspire change and challenge extremism in all its forms. This is a hard-hitting memoir of one man's journey into and out of Islamic extremism.

**Petrovic, V. The emergence of historical forensic evidence. Routledge, 2016.**

This book scrutinizes the emergence of historians participating as expert witnesses in historical forensic contribution in some of the most important national and international legal ventures of the last century. It aims to advance the debate from discussions on whether historians should testify or not toward nuanced understanding of the history of the practice and making the best out of its performance in the future.

**Shaw, Malcolm N. *Rosenne's Law and Practice of the International Court: 1920-2015 (print and online), Fifth Edition.***

The popularity of his works established Shabtai Rosenne as the undisputed expert on the International Court of Justice's law and practice of his time. Irrefutably the leading work on the court, previous editions of Rosenne's *Law and Practice of the International Court* have influenced generations of legal scholars, practitioners, judges, and students alike. The Fifth Edition, by Malcolm N. Shaw, combines his expertise as both an academic and practitioner to bring this resource up-to-date while retaining Rosenne's distinctive voice, erudition, and rigorous objectives.

Preserving Rosenne's focus on the caselaw of the Court, the Fifth Edition is supplemented with increased references to the leading academic literature, and, like the Fourth Edition, is divided into four substantive volumes:

- Volume I: The Court as one of the principal organs, in particular the principal judicial organ, of the United Nations. Diplomats and legal advisers who deal with matters relating to the Court on a political level and through different organs and offices of the United Nations will appreciate the full discussion of the diplomatic, political, and administrative aspects of the Court's affairs.
- Volume II: Jurisdiction and the treatment of jurisdictional matters by the Court. This volume also includes the Court's advisory jurisdiction, and how that work relates to complex legal issues in matters of major political import.
- Volume III: The Court's procedure.
- Volume IV: The work's final volume includes the English texts of the Charter of the United Nations, the Statute of the Court, the Practice Directions, the Rules of the Court, and a full set of indexes.

The Fifth Edition (updated through 2015) of Rosenne's *Law and Practice of the International Court* is an essential component of all international law libraries and an indispensable work for those practicing in the field, who will all appreciate access to the most recent work on the Court.

**Speckhard, A. & A.S. Yayla. *ISIS defectors – inside stories of the terrorist Caliphate. Advanced Press, 2016.***

The authors hadn't intended to put themselves in danger but that's what happened as they interviewed an unprecedented thirty-two battle-hardened defectors about the gritty details of life inside ISIS. With unparalleled breadth, depth and access, *ISIS Defectors: Inside Stories of the Terrorist Caliphate* offers a compelling view of ISIS from men, women

and teens now in hiding, having escaped the most brutal terrorist group in recent history. They were fighters and commanders, wives of fighters—living and dead, female enforcers, and Cubs of the Caliphate, including a child who volunteered and almost got sent as a suicide bomber at age thirteen.

They discuss motivations for joining and defecting, and delve into news-making topics: coercing children to become suicide bombers; brides of ISIS and the brutal female morality police; Yazidi and Sunni sex slaves held in massive compounds where fighters use them at will; privilege bestowed on foreign fighters; prisoners kept for the sole purpose of beheading by new inductees.

The defectors shared a startling array of photos and videos from personal cell phones and many are included in the digital version of this book. An unexpected subplot unfolded when Dr. Yayla found himself tailed by ISIS, and Dr. Speckhard barely missed two suicide attacks. But the authors are not deterred. As counter-terrorism experts with specialties in research psychology and law enforcement, they see ISIS as more than a terrorist group. ISIS is a brand that falsely sells dignity and purpose, justice and the restoration of glory—to vulnerable recruits—masterfully recruiting some 30,000 members online. It's the biggest influx of foreign fighters to a terrorist haven in history.

Using the defectors own words, the authors intend to break the ISIS brand. They have videotaped these interviews to edit them into short clips, memes and tweets for an online counter-offensive. Speckhard and Yayla state that disillusioned ISIS defectors are the most influential tool for countering ISIS propaganda. The persuasive voices of these defectors and the resulting videos will soon invade ISIS chat rooms where their propaganda thrives. With over one thousand active investigations in the U.S. across all 50 states, discrediting ISIS ideology is essential to stopping it.

**Stover, Eric, Victor Peskin & Alexa Koenig. *Hiding in Plain Sight. The Pursuit of War Criminals from Nuremberg to the War on Terror. University of California Press, 2016.***

*Hiding in Plain Sight* tells the story of the global effort to apprehend the world's most wanted fugitives. Beginning with the flight of tens of thousands of Nazi war criminals and their collaborators after World War II, then moving on to the question of justice following the recent Balkan wars and the Rwandan genocide, and ending with the establishment of the International Criminal Court and America's pursuit of suspected terrorists in the aftermath of 9/11, the book explores the range of diplomatic and military strategies—both

successful and unsuccessful—that states and international courts have adopted to pursue and capture war crimes suspects. It is a story fraught with broken promises, backroom politics, ethical dilemmas, and daring escapades—all in the name of international justice and human rights.

*Hiding in Plain Sight* is a companion book to the public television documentary *Dead Reckoning: Postwar Justice from World War II to The War on Terror*. For more information about the documentary, visit [www.saybrookproductions.com](http://www.saybrookproductions.com). For information about the Human Rights Center, visit [hrc.berkeley.edu](http://hrc.berkeley.edu)

**Verkaik, R. Jihadi John. The making of a terrorist. Oneworld publications, 2016.**

It was a defining moment, the first time 'Jihadi John' appeared. Suddenly Islamic State had a face and the whole world knew the extent of their savagery. Weeks later, when his identity was revealed, Robert Verkaik was shocked to realise that this was a man he'd interviewed years earlier. Back in 2010, Mohammed Emwazi was a twenty-one-year-old IT graduate who claimed the security services were ruining his life. They had repeatedly approached him, his family and his fiancée. Had they been tracking an already dangerous extremist or did they push him over the edge?

In the aftermath of the US air strike that killed Emwazi in November 2015, Verkaik's investigation leads him to deeply troubling questions. What led Emwazi to come to him for help in the first place? And why do hundreds of Britons want to join Islamic State? In an investigation both frightening and urgent, Verkaik goes beyond the making of one terrorist to examine the radicalisation of our youth and to ask what we can do to stop it happening in future.

## Some other publications

### ICTJ Handbook on Complementarity

How complementarity works and what its impact has been on the ICC and national authorities are critical aspects of today's debate about how best to pursue justice for victims. The 100-page book, available for free download, describes the current laws and practices related to complementarity for readers who are not specialists.

Readers will not find in the handbook discussions of the merits or demerits of particular ICC cases – or opinions on if the ICC prosecutor should have brought charges against one suspect over another. Nor will they find inroads on questions like whether the ICC has unjustifiably targeted African leaders.

Instead, by describing how complementarity works in practice and how it has been applied in countries like Afghanistan, Colombia, Cote d'Ivoire, the Democratic Republic of the Congo, Kenya, and Libya, the handbook is meant to provide readers with a deeper understanding of the inner workings of the ICC and national courts and make some of the debates surrounding the court more critical and less polemical.

Downloadable in French and English: <https://www.ictj.org/publication/handbook-complementarity>

## MISCELLANEOUS

### Transitional Justice Study Tour Rwanda

The University of Rwanda is organizing a Transitional Justice Study Trip to Rwanda, scheduled to begin on Sunday 19<sup>th</sup> until Saturday 25<sup>th</sup> March 2017. Deadline for application is 23<sup>rd</sup> December 2016 and applicants should send a letter of motivation explaining their interest in the course together with their curriculum vitae to Mr. Samuel Sibomana; [s.sibomana@ur.ac.rw](mailto:s.sibomana@ur.ac.rw) copying to Dr. Alphonse Muleefu; [a.muleefu@ur.ac.rw](mailto:a.muleefu@ur.ac.rw). See the call of application at <http://www.ur.ac.rw/?q=content/call-applications>

### The Perpetrator Studies Network Susanne C. Knittel, Utrecht University

The Perpetrator Studies Network is an international and interdisciplinary network of scholars and educators whose research and teaching centres on perpetrators of genocide, mass killing, and political violence. It provides a forum for scholarly discussions about and innovative research into perpetrators and perpetration across historical, geographic, and cultural lines.

Over the past two decades there has been a growing interest, among scholars in diverse fields, in perpetrators and perpetration. Scholars working in fields such as history, law, criminology, sociology, anthropology, philosophy, cultural studies, memory studies, psychology, political science, literary studies, film studies, visual art, etc. are concerned with a broad range of issues relating to the perpetrator, from questions of definition, typology, and conceptual analysis to the study of motivations and group dynamics to questions of guilt and responsibility as well as representation and memory politics. While the interest in the perpetrator is perhaps not new in many fields, in the past few years the volume of publications on this topic has increased significantly and there has been more

crossover between the disciplines. One can now begin to speak of Perpetrator Studies as a field in its own right.

This network aims to encompass the full interdisciplinary scope of perpetrator studies as a field and facilitate academic research on this topic across disciplinary boundaries. Members of the network have so far organized two large international conferences, and the aim is to make this an annual event. Another way in which the network fosters dialogue and exchange is through the *Journal of Perpetrator Research (JPR)*, an interdisciplinary, peer-reviewed, open access journal founded by members of the network. It will be published online by Winchester University Press with Issue 1 to be released in the spring of 2017.

If you are interested in finding out more about the network or becoming a member, or if you would like to be involved in the journal, or host a network conference or affiliated event, please visit the website at <http://perpetratorstudies.sites.uu.nl>.

#### **Call for papers ‘Philosophical Foundations of International Criminal Law’**

The ‘Philosophical Foundations of International Criminal Law’ project seeks to address these and related questions from the perspective of multiple disciplines and angles. Papers will be discussed in a project conference to be held in New Delhi on 25-26 August 2017, and considered for publication in an anthology to be edited by a team led by Professor Morten Bergsmo. All papers will be reviewed by an editorial committee. Interested speakers should send a draft title and abstract of their proposal (500 words), written in English, together with a curriculum vitae to [calls@cilrap.org](mailto:calls@cilrap.org). Proposals are reviewed on a rolling basis, and are due no later than 21 March 2017. Selected speakers will be notified as they are accepted, no later than 25 March 2017. Their travel to, and accommodation in, New Delhi will be covered by CILRAP. Guidance will be offered to authors during their preparation of papers, as may appropriate.

[http://www.fichl.org/fileadmin/fichl/documents/161117\\_Philosophical\\_Foundations\\_Delhi\\_170825-26.pdf](http://www.fichl.org/fileadmin/fichl/documents/161117_Philosophical_Foundations_Delhi_170825-26.pdf)

#### **Call for papers ‘Transnational and Global Dimensions of Justice and Memory Processes in Europe and Latin America’**

Focusing on Europe and Latin America, this conference aims to take stock of this transnational turn in justice and memory studies and to develop a socio-historical analysis of the circulation of norms, repertoires of collective action and models adopted

to deal with the legacies of authoritarian regimes and armed conflicts. It seeks to trace the interconnections and mutual influences of these processes both within Europe and Latin America and between the two regions, as well as the mobilizations of European and Latin American actors in international institutions, global NGOs, or at venues on other continents.

The conference welcomes theoretically grounded empirical investigations from a range of different disciplines in the social sciences and the humanities that adopt a critical stance on post-dictatorial/post-conflict justice and memory processes and move beyond abstract and normative perspectives. Possible topics include, but are not restricted to, the following subjects:

- \* Theoretical perspectives on the study of transnational/global phenomena of dealing with the past.
- \* The role of Europe and Latin America in globalizing narratives and norms of dealing with the past.
- \* Circulation of ideas across national borders in various professional and social fields (e.g. law, memorialization sites and practices, historiography, forensics etc.).
- \* The role of transnational advocacy networks/epistemic communities/professional associations.
- \* Victims’ activism in transnational perspective (forms of mobilization, cooperation/competition, appropriation of representation etc.).
- \* The interplay between various places and scales of mobilization: how are processes aimed at dealing with the past articulated on national, transnational, regional and global levels?
- \* Re-appropriation and resistance of local actors to ideas and paradigms originating in other national or global venues.

The languages of the conference are English and French.

Please submit your proposal including authors’ names, email addresses and affiliations, a short CV and an abstract of around 300 words by 10 January 2017 to: [criminalizationofthepast@gmail.com](mailto:criminalizationofthepast@gmail.com). The conference organizers will provide a response to the proposals by 30 January 2017. Selected participants will be invited to submit their papers (max. 7,000 words including tables, figures, and references) by 10 May 2017.

For additional information, please contact Raluca Grosescu ([ralucagrosescu@gmail.com](mailto:ralucagrosescu@gmail.com)) or Laure Neumayer ([laure.neumayer@wanadoo.fr](mailto:laure.neumayer@wanadoo.fr)).

### **The European Criminology Group on Atrocity Crimes and Transitional Justice (EACTJ) at the ESC in Münster**

The European Criminology Group on Atrocity Crimes and Transitional Justice (EACTJ) provides a network for European criminologists who are engaged in research on atrocity crimes and transitional justice, whether in or on Europe, or globally. The group was founded in 2013, and has presently more than 30 members.

Following the success of Prague 2014 and Porto 2015, the group presented itself with an impressive line-up of six panels at the 2016 European Criminology Conference in Münster. The panels addressed a broad range of themes, and presenters covered all global regions, with countries and conflicts from Europe and the former Yugoslavia to Rwanda, DRC in Africa and Argentina and Colombia in Latin America. Presenters came from all over Europe, Asia and Latin America. Starting with involvement in atrocity crimes and the narratives of perpetrators, the panellists and audience went on to discuss the role of criminological and sociological theory. The panels reflected the changing landscape of contemporary atrocity crimes with presentations on the involvement of transnational corporations, but also new developments in transitional justice with papers on actors and advocates in the field of transitional justice with a special focus on sexual violence, the regionalisation of international criminal justice and courts, and critical assessments of sentencing practices at various levels of national and international jurisdiction.

Professor Alette Smeulers from University of Groningen, who is one of the group's chairs, presented a highly acclaimed keynote address on 'State Crime', thus giving the group a high profile. Stephan Parmentier (KU Leuven) and Chrisje Brants (Northumbria/ Utrecht), Barbora Hola (VU University Amsterdam) and Susanne Karstedt (Griffith University, Australia) were discussants.

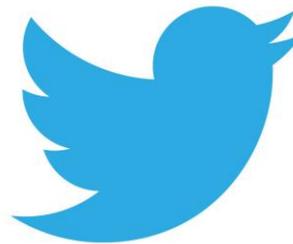
The EACTJ group is active beyond the annual conferences. At a meeting in Münster plans were discussed for a COST action, and a post-graduate and early career researcher event. The group established its own official webpage ([www.eactj.org](http://www.eactj.org)) that will be launched on 1 January 2017. The website is constructed as a communication- and exchange-platform and will enhance the visibility of researchers in the field of the criminology of atrocity crime, state crime and transitional justice throughout the year and beyond the annual meeting at ESC conferences. In 2017, Routledge will launch a new series 'Routledge Socio-Legal Frontiers of Transnational Justice',

edited by Chrisje Brants, Susanne Karstedt and Nandor Knust. The series will publish manuscripts within three broad themes: "Transitional justice mechanisms in a changing landscape"; "Law and legal systems in transition"; and "Addressing past injustice in mature democracies".

The EACTJ Steering Group includes Barbora Hola ( VU University Amsterdam), Susanne Karstedt (Griffith University, Australia), Nandor Knust (Max-Planck Institute for Foreign and International Criminal Law, Germany), Jon Shute (University of Manchester) and Alette Smeulers (University of Groningen, the Netherlands).

Those interested in joining the group, should email Nandor Knust ([n.knust@mpicc.de](mailto:n.knust@mpicc.de)) or visit the webpage under [www.eactj.org](http://www.eactj.org) (launch date: 1. January 2017)

### **Regular updates via Twitter**



If you do not want to wait for the digital newsletter which is only published twice a year you can follow regular updates of new books, articles and databases via twitter.

<https://twitter.com/AletteSmeulers>

If you want to get regular updates on various cases at the international tribunals you can follow Thijs Bouwknegt @thijsbouwknegt

### **SUBSCRIPTION**

The newsletter will be sent electronically to all who have signed up on the website. Scholars who conduct research in the field of international crimes, such as genocide, war crimes, crimes against humanity and other gross human rights violations, international (criminal) law or any other relevant subject matter are invited to send us their details and they will be enlisted on the website.

In case you are interested: please contact us: [Roelof.haveman@gmail.com](mailto:Roelof.haveman@gmail.com) and give your names, position, institutional affiliation, e-mail address, research interest and website and we will enlist you as a scholar within two weeks.

Others interested in receiving the newsletter who do not conduct research in any of the related areas can subscribe to the newsletter as an affiliated member. Please inform us of your interest via a mail to: [Roelof.haveman@gmail.com](mailto:Roelof.haveman@gmail.com) and supply us with your name and e-mail address and you will receive the newsletter via e-mail.

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**Deadline next issue: 31<sup>st</sup> May 2017**

*Please send submissions for the newsletter to:*  
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