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Khmer Rouge Trials: justice delayed for old genocide crimes

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NEWSLETTER CRIMINOLOGY AND INTERNATIONAL CRIMES

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EDITORIAL

More than any transitional justice mechanism in the world, the *gacaca* in Rwanda is highly contentious, not the least among international scholars. As every discussion about Rwanda, the discussion about *gacaca* is highly politicised. An important argument raised against the *gacaca* is that it is seen as closely linked to the government, hence as a

political instrument of the ruling RPF. The *gacaca* as an instrument of an authoritarian regime to frame the narrative of what happened before, during and after the 1994-genocide. The *gacaca* as an instrument to label all Hutu as *génocidaires*, perpetrators of the genocide, and to firmly state to the Rwandans that the only killings that matter are the genocidal ones, not the crimes committed by the RPA/RPF during and after the war and the days of the genocide. In short, the *gacaca* as an instrument to condition the minds of the people. Inevitably this political perspective is reflected in many of the articles and documentaries about *gacaca*. On top of that one may add that this takes place in a culture that only very few people really understand.

A complicating factor is that (hardly) any of the international scholars has his or her information out of first-hand, as (hardly) any of them speaks or understands Kinyarwanda. Furthermore, there are only very few scholars writing about *gacaca* who have seen or experienced more than 10 *gacaca*-sessions. Those who have experienced *gacaca* at least have firsthand knowledge although most of them need interpretation by a Kinyarwanda speaker. However, most of them could not escape the politicised debate. The same pertains to the Rwandans who experienced *gacaca* themselves and understand the culture and the language. They may support the international scholars' interpretation or offer a counter narrative, but again, their opinions are politicised, if not already by themselves, then by the international scholars listening to them.

Moreover, I dare say that the vast majority of the scholars writing about the *gacaca* has never even been in Rwanda and seen a *gacaca*, and that number will, with the *gacaca* having closed down, only grow in the future. These scholars fully have to rely on the knowledge, impressions and interpretations of others who did experience *gacaca* in practice, and documented this in scholarly or journalistic articles and radio and television documentaries. Or, similarly, on hearsay from people in the Rwandan diaspora who in their turn were informed by others. Knowledge, impressions, interpretations and hearsay that are coloured by the politicised discussion about *gacaca*.

As long as these opinions and interpretations are used as perceptions, there is no problem. As we all

know, perceptions differ from facts. However, the contrary seems to be true. Too often perceptions of people are presented as facts: this is how it 'is and will be forever' instead of 'this is how people at this time and this place perceive reality'. Denying that perceptions may change over time. We do not know, for example, how Rwandans will perceive the *gacaca* within twenty or forty years from now.

At the moment there is very little factual material to support or counter these interpretations and perceptions. The only factual material is stored in boxes in a building in Kigali, not safe for decay over time, in a language which at least international scholars do not understand. In light of the above the importance of archiving the *gacaca*-documents in such a way that Rwandan and international scholars and others interested in them can access all materials speaks for itself.

Roelof Haveman

AGENDA

22-23 January 2015: Denialism and Human Rights. Organized by the Maastricht Centre for Human Rights. Venue: Faculty of Law of Maastricht University, the Netherlands. See for more information: <http://law.maastrichtuniversity.nl/denialismandhumanrights/>

18-21 February 2015: International Studies Association (ISA), annual meeting, New Orleans, United States. Website: <http://www.isanet.org/Conferences/New-Orleans-2015>

8-10 June 2015: Stockholm Criminology Symposium, Stockholm, Sweden. deadline submission proposal: 27 February 2015, More info: <http://10times.com/stockholm-criminologysymposium>.

5-9 July 2015 International Symposium of the world society of victimology, Perth, Australia. Deadline abstracts: 7 March 2015. More information: <http://www.aic.gov.au/events/aic%20upcoming%20events/2015/wsv.html>

8-12 July 2015 International Association of Genocide Scholars (IAGS), biennial conference, Yerevan, Armenia. Deadline submissions: 23 January 2015. Website: <http://www.genocidescholars.org/news/twelfth-meeting-iags-july-8-12-2015-yerevan-armenia>

2-5 September 2015 European Society of Criminology (ESC) Annual Conference, in Porto,

Portugal. More information: <http://www.eurocrim2015.com/>

18-21 November 2015: American Society of Criminology (ASC), annual meeting, 18-21 November 2014, Washington DC, United States Website: <https://www.asc41.com/annualmeeting.htm>

*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.*

Max van der Stoel Human Rights Award 2014 awarded to Etienne Ruvebana

On the occasion of World Human Rights Day on December 10th, the Max van der Stoel Human Rights Awards 2014 have been awarded. Etienne Ruvebana of the University of Groningen won the first prize for his PhD thesis on states' obligations under international law to prevent genocide.

According to the jury led by Emeritus Professor of Immigration Law Pieter Boeles of Leiden University, Etienne Ruvebana has showed courage in writing this thesis by performing a pioneering job, and providing very concrete conclusions and recommendations that can be built upon. Ruvebana investigated the obligation to prevent genocide under international law and more particularly the extent of that obligation under the Genocide Convention and customary international law. Ruvebana won 2250 euros for his research, entitled Prevention of Genocide under International Law; an analysis of the obligations of States and the United Nations to prevent genocide at the primary, secondary and tertiary levels.

Professor Claus Kreß is granted the 2014 M.C. Bassiouni Justice Award

Professor Claus Kreß was granted the 2014 M.C. Bassiouni Justice Award during a ceremony in New Delhi on 28 November 2014. The Award Committee stated that Professor Kreß received the Award in recognition of (a) his distinguished service to the academic discipline of international criminal law, through a considerable number of high quality academic publications, speeches, teaching, and research supervision; (b) his intellectual leadership in the process to operationalize the crime of aggression in the context of the International Criminal Court; (c) his expert advisory service, as an academic, for the International Criminal Court on the Regulations of the Court and for the German Government on legal

questions concerning the International Criminal Court; (d) his global, unprejudiced mind-set, rigour and fairness in his academic work on international criminal law; and (e) the manner in which he has conducted his academic service in international criminal law with distinct temperance, tact and trustworthiness. The 2014 Award was dedicated to “outstanding academic service to international criminal law”. You may find more information here.

The Award was granted in the context of the second conference in the “Historical Origins of International Criminal Law” CILRAP research project, held in Delhi on 29-30 November 2014. The first two books in this project – “Historical Origins of International Criminal Law: Volumes 1 and 2” (1,542 pp.) – will be launched at a side-event to the upcoming Session of the ICC Assembly of States Parties at UNHQ in New York (Conference Room 6) on 12 December 2014 at 15:00.

The 2015 M.C. Bassiouni Justice Award will be dedicated to outstanding diplomatic service to international criminal law. Nominations with reasons can be submitted to info@cilrap.org by 1 July 2015.

THE HAGUE NEWS XIII

By: Barbora Hola

As in every issue, this contribution outlines recent developments at the Hague-based international criminal courts and tribunals in the period from the end of May till 1 December 2014. As the ad hoc criminal tribunals have slowly been closing down and transferring their remaining functions to the Residual Mechanism, the bulk of activity in The Hague has been concentrated at the ICC.

1. ICTY

In the second half of 2014 the ICTY has not delivered any new judgments. On 23 September 2014 closing arguments in the trial of **Radovan Karadzic** started. In its closing brief, the Prosecution requested life imprisonment (the maximum available sentence at the ICTY) as “the only appropriate sentence”, while Karadzic argued for his acquittal or alternatively a substantively mitigated sentence primarily referring to “the Holbrooke immunity deal”. The trial chamber judgment is expected to be delivered in the second half of the next year. Karadzic’ trial started in 2009 and he stands charged with multiplicity of crimes including the massacre in Srebrenica and shelling of Sarajevo.

The appeals judgment in the case of **Popovic et al.** is scheduled to be delivered on 30 January 2015.

2. ICTR

As opposed to the ICTY, the ICTR Appeals Chamber delivered a number of judgements and rounded off four cases. The only and last case now pending before the ICTR Appeals Chamber is the so called Butare case against six accused including the first woman convicted of genocide by an international criminal tribunal, **Pauline Nyiramasuhuko**, a former Minister of Family and Women’s Development in Rwanda.

On 30 June the Appeals Chamber concluded the case against one of the defendants in the Military II case (case concerning four former senior officials in the Rwandan Army) – **Augustin Bizimungu**, former Chief of Staff in the Rwandan Army. The Appeals Chamber reversed some of Bizimungu’s convictions relating to specific incidents of killings and rape at various locations arguing that the Trial Chamber erred in its assessment of evidence. The Appeals Chamber also reversed Bizimungu’s convictions based on the Trial Chamber’s finding that he exercised superior responsibility over **Interahamwe**. Despite this reduction in the scope of his responsibility, the Appeals Chamber affirmed the sentence of 30 years in light of the serious nature of remaining convictions that include genocide, extermination, murder and rape as crimes against humanity and war crimes.

In September 2014, the Appeals Chamber delivered judgments in three other cases. First, the appeals judges affirmed the sentence of life imprisonment and convictions for genocide, incitement to genocide, extermination and rape as crimes against humanity and murder as war crime of **Édouard Karemera**, the National Secretary, First Vice President, and Executive Bureau member of the MRND party and later a Minister of Interior and Communal Development during the genocide, and **Mathieu Ndirumpatse**, a National Party Chairman and chairman of the MRND Executive Bureau in 1993 and 1994. The Appeals Chamber reversed certain trial chamber’s findings, which, however, did not result in the overturning of any of Karemera’s or Ndirumpatse’s convictions. Second, **Idelphonse Nizeyimana**, a former captain at the Butare military academy, saw his sentence of life imprisonment (originally delivered on trial in June 2012) reduced to 35 years imprisonment by the Appeals Chamber based on the fact that appeals judges reversed (with two judges dissenting) his convictions relating to his participation in two attacks which amounted to killings of thousands of victims. Finally, the Appeals Chamber affirmed convictions of **Callixte Nzabonimana**, former

Rwandese Minister of Youth and Associate Movements, for instigating genocide and extermination as a crime against humanity and for public incitement and conspiracy to commit genocide. Not surprisingly, the Appeals Chamber also confirmed his sentence of life imprisonment.

3. ICC

Democratic Republic of Congo

On 9 June 2014, Pre-Trial Chamber II confirmed the charges of war crimes and crimes against humanity against **Bosco Ntaganda**, former alleged Deputy Chief of the General Staff of the Force Patriotiques pour la Libération du Congo (Patriotic Force for the Liberation of Congo) (FPLC) allegedly committed during the conflict in the Ituri province in DRC by the UPC/FPLC and in the course of two specific attacks against the non-Hema civilian population in specified locations in *Banyali-Kilo collectivité* in 2002 and in *Walendu-Djatsi collectivité* in 2003. In this decision, the PTC accepted that war crimes of rape and sexual slavery can be committed by a military leader against his/her own combatants. The trial is set to start on 2 June 2015.

Following **Germain Katanga**'s conviction of war crimes and crimes against humanity committed during the 2003 attack on the village of Bogoro in Ituri issued by the Trial Chamber II in March, the Trial Chamber sentenced Katanga, by majority, to 12 years imprisonment. Since both, defence and prosecution, discontinued their respective appeals, Katanga's case is the first finalized case at the ICC. Given the fact that according to the ICC Statute, convicts are eligible for early release after serving 2/3 of their sentence and that Katanga had, at the time of the decision, spent already almost seven years at the ICC detention facility (the period in detention is deducted from the time to be served), Katanga will most probably serve the rest of his sentence in The Hague and will be one of the first convicts to be early released by the ICC, provided that the judges will find him eligible. It will be interesting to see how the ICC judges will deal with the issue of early release and post-release given not very sophisticated practice in this respect at the ad-hoc international criminal tribunals.

On 1 December, the second case was finalized at the ICC. The Appeals Chamber delivered its judgment on the appeals against a verdict and sentence in the **Lubanga** case. Lubanga was convicted on trial of war crimes of enlisting and conscripting child soldiers and sentenced to 14 years. The Appeals Chamber dismissed the Defence appeal against the verdict and the Defence and Prosecution appeal against the sentence in its

entirety and affirmed the Trial Chamber decision. Given the protracted character of the proceedings, Lubanga has spent already 8 years and 9 months in the ICC detention. Consequently, he will be eligible for early release in 7 months from now, which makes it, similarly to Katanga, improbable that he will be transferred to any country which agreed to enforce the ICC sentences and will serve his sentence in the detention unit in The Hague. For more detailed commentary on the judgment, see the contribution of Thijs Bouwknegt in this issue.

Darfur, Sudan

As reported in the previous issue, the date for the opening of the trial of **Abdallah Banda Abakaer Nourain**, the only remaining accused in the Haskanita camp case, originally scheduled to start in May 2014 and then November 2014, is still to be determined. On 11 September 2014, Trial Chamber IV issued, by majority, an arrest warrant against Banda and directed the ICC Registry to transmit the new requests for arrest and surrender to any State, including the Sudan, on whose territory Mr Banda may be found. The judges had requested Sudan's cooperation to facilitate the accused's presence at trial. "This cooperation, according to the information provided by the Registry, is not forthcoming and consequently ... there are no guarantees that, in the current circumstances, Banda will be in an objective position to appear voluntarily, regardless of whether he wishes to be present at trial or not." The Chamber concluded that an arrest warrant is now necessary to ensure the accused's presence.

Republic of Kenya

The trial commencement date was also vacated again in the case against **Uhuru Kenyatta**, whose trial was set to start on 7 October 2014. Two status conferences took place in October to discuss "the status of cooperation between the OTP and Kenyan government". In September the Prosecution requested the Trial Chamber to further adjourn the trial of Mr Kenyatta until the Government of Kenya executes in full the Prosecution's April 2014 Revised Request for records. The Defence, on the other hand, argued for the termination of the proceedings. During one of the status conferences, Kenyatta appeared before the ICC after taking an extraordinary step of temporarily stepping down from the presidential office, supported by over 100 Kenyan politicians, who flew over to The Hague. The Prosecution asked judges to indefinitely adjourn the case due to a lack of evidence while the defence argued for the termination of the proceedings.

On 3 December the judges denied to further adjourn the Kenyatta trial and on 5 December the Prosecutor, referring to insufficient evidence caused by a lack of cooperation of Kenya government, decided to withdraw charges against Kenyatta thus terminating the proceedings. The withdrawal spurred a heated debate among diplomats, politicians and scholars. Kenyatta reacted to the termination of his case with an apparent excitement stating: "One down, two to go..." referring to the two other Kenya cases pending at the ICC.

Central African Republic

In November, the Trial Chamber III heard the closing oral arguments in the case against **Jean Pierre Bemba**. The judges are now deliberating the judgment, which will be pronounced "in due course". Meanwhile, the four accused in the case concerning offenses against the administration of justice allegedly committed during the trial of Bemba (as reported in the last issue) were granted interim release and set free from detention in October. Aimé Kilolo Musamba was released in Belgium, Fidèle Babala Wandu in the DRC, Narcisse Arido in France and Jean-Jacques Mangenda Kabongo in the UK. The Chamber found that, since the reasonableness of the duration of the detention has to be balanced inter alia against the statutory penalties applicable to the offences at stake in these proceedings, the release was necessary to avoid that the duration of the pre-trial detention become disproportionate. Bemba, as the fifth suspect in this case, remains in detention in connection to his other case. The charges against all the accused were partially confirmed in November. The offences, all committed between the end of 2011 and 14 November 2013, include corruptly influencing witnesses by giving them money and instructions to provide false testimony, presenting false evidence and giving false testimony in the courtroom. The Chamber declined to confirm the charges brought by the Prosecutor in connection with the alleged presentation of false or forged documents.

Libya

On the one hand, in late May 2014, the Appeals Chamber, by majority, confirmed the admissibility of the case against **Saif Al-Islam Gaddafi**. The Appeals Chamber ruled that the Pre-Trial Chamber did not err when it concluded that Libya had fallen short of substantiating that Libya's investigation covers the same case that is before the Court. The Appeals Chamber also rejected Libya's arguments that the Pre-Trial Chamber had made procedural errors when reaching its decision. On the other hand, in July the Appeals Chamber unanimously confirmed the inadmissibility of the case against

Abdullah Al-Senussi finding that there were no errors (i) in the findings of the Pre-Trial Chamber that Libya is not unwilling or unable to genuinely prosecute Mr Al-Senussi, (ii) nor in the exercise of its discretion in the conduct of the proceedings or in the evaluation of the evidence. Given the current situation in Libya, some authors, however, question the ability of Libyan authorities to conduct an effective proceedings against Al Senussi and call the ICC for reconsideration of this decision. (see [here](#)).

Côte d'Ivoire

The charges of crimes against humanity (murder, rape, other inhuman acts and persecution) against **Laurent Gbagbo**, a former president of Côte d'Ivoire, were confirmed by the majority of Pre-Trial Chamber I in June 2014. The Chamber found that there is sufficient evidence to establish substantial grounds to believe that Laurent Gbagbo is criminally responsible for the crimes against humanity allegedly committed in Abidjan, Côte d'Ivoire, between 16 and 19 December 2010 during and after a pro-Quattara march on the RTI headquarters, on 3 March 2011 at a women's demonstration in Abobo, on 17 March 2011 by shelling a densely populated area in Abobo, and on or around 12 April 2011 in Yopougon. The confirmation of charges decision was issued more than one year after the confirmation hearing took place in February 2013, when the confirmation decision was adjourned by the Pre-Trial Chamber, given the prosecution's excessive reliance on hearsay evidence and NGO reports. The trial is scheduled to start before Trial Chamber I on 7 July 2015.

In October the confirmation of charges hearing in the case of **Charles Blé Goudé**, the third ICC suspect in the situation in Côte d'Ivoire next to Gbagbo and his wife Simone, took place. The judges should issue their decision within 60 days from the receipt of written submissions by Defence on 17 October. Goude is allegedly responsible for crimes against humanity of murder, rape and other sexual violence, persecution and other inhuman acts.

Korea & Comoros

In two situations in the preliminary examination stage, Korea and Comoros, the OTP declined to open formal investigations. In June, the Prosecutor did not open the investigation in the Korea situation citing a lack of jurisdiction. According to the OTP, the situation in Korea, relating to two incidents of sinking a South Korean warship Cheonan and shelling of Yeonpyeong island, did not amount to war crimes under the jurisdiction of the ICC.

Regarding the Cheonan, the OTP concluded “that the alleged attack was directed at a lawful military target and would not otherwise meet the definition of the war crime of perfidy as defined in the Rome Statute.” With respect to the shelling, the Prosecutor argued that “even though the shelling resulted, regrettably, in civilian casualties, the information available on this incident does not provide a reasonable basis to believe that the attack was intentionally directed against civilian objects or that the civilian impact was expected to be clearly excessive in relation to the anticipated military advantage”. The Prosecutor has therefore concluded that there is no reasonable basis to initiate an investigation.

Similarly in November the OTP issued a statement declining to open a formal investigation in the situation of Comoros. This time however the reason was not a lack of jurisdiction but the insufficient gravity of the acts. On 14 May 2013 Comoros submitted a referral to the Prosecutor relating to the attacks on the vessel Mavi Marmara registered under Comoros flag bound for Gaza strip by Israeli forces. The Prosecutor concluded that Israeli acts could have amounted to war crimes under the ICC jurisdiction, however, are of insufficient gravity to warrant opening investigation. For one of the commentaries on the OTP’s decision see for example [here](#).

SHORT ARTICLES

All short articles are welcome. Please send your contribution to one of the editors (addresses at the bottom of the newsletter)

The immunity provision in the Draft Protocol for the proposed African Court and its implications on Africa’s contribution in the fight against impunity.

By James Nyawo

On 27 June 2014 in Malabo, Equatorial Guinea, the Africa Union (“AU”) Assembly took a decision to adopt a Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights. The purpose of the Protocol is to establish the African Court of Justice and Human Rights which would have jurisdiction over atrocity crimes and other specified crimes that are peculiar to Africa. The Protocol and the Statute would only enter into force after acquiring 15 ratifications. In the event of this happening, Africa would become the first continent to have a regionalised criminal justice mechanism. Such a development befits a continent that has for centuries been victimised by

abuse of power and would be a step in the right direction to demonstrate AU’s practical commitment to reject impunity.

It is regrettable that the approved Protocol includes article 46A which grants immunity to the incumbent AU Heads of State and Government and their officials. The article simply poisoned what could have been a ground-breaking African innovation and contribution in the global fight against impunity. Article 46A states that, ‘No Charges shall be commenced or continued before the Court against any serving AU Head of States and Governments or anybody acting or entitled to act in such capacity, or other senior state officials based on their functions, during their tenure of office.’ It cordons the serving African leaders and their officials from the jurisdiction of the proposed Court and also gives them reason to stay in power in order to avoid investigations and prosecutions. The continent already has a record of long serving Presidents whose human rights records are highly questionable. This is disturbing considering that in most situations where international crimes are committed political leaders are often involved. The magnitude and level of organisation required to commit international crimes such as genocide often links them to either political or economic abuse of power, and those responsible often shield themselves from accountability using their power positions.

The decision was adopted against a background of waves of criticism of the International Criminal Court (“Court”) by the Kenyan government and some African states over its handling of the cases involving Kenyan President Uhuru Kenyatta and his Deputy President William Ruto. These two had been indicted by the Court for their alleged involvement in the 2008 post-election violence. They were indicted before they were elected into the offices of the President and Deputy President.

Immediately after their election into office, President Uhuru Kenyatta and his Deputy channelled Kenyan diplomatic and financial resources towards getting their cases at the Court either terminated definitively or suspended. They successfully imbued the majority of African Heads of State and Government through the AU with the impression that the trial was undermining their ability to perform constitutional duties. They argued that this was affecting regional peace and stability in the East and Horn of Africa region. The attempt to link the trial of President Uhuru Kenyatta and Deputy President William Ruto to the war against terror and international peace and stability was unsuccessful in persuading the United Nations Security Council to defer the Court proceedings against the two leaders. Kenya and the AU’s fall

back strategy was to try to circumscribe the jurisdiction of the Court. In 2013 the AU called an extraordinary summit where it decided that, 'no charges shall be commenced or continued before any International Court or Tribunal against any serving AU Head of State or Government or anybody acting or entitled to act in such capacity during their term of office'. This became the foundational text for the provision on immunity that was included in the Protocol.

Still, the AU's decision in this regard had no legal implication on the Court's proceedings primarily because Kenya is a State Party to the Rome Statute, and had waived the immunity of its former and incumbent Head of States. Kenya's ratification and domestication of the Rome Statute meant that the Court have jurisdiction over all Kenyan citizens. This was confirmed by the International Court of Justice judgement in the Arrest Warrant Case (Democratic Republic of the Congo v. Belgium) in 2002 when it confirmed that although Heads of States have immunities under customary international law they may be investigated and prosecuted by 'certain international criminal courts, where they have jurisdiction.'

During the Twelfth Session of the Assembly of States Parties in November 2013 a separate segment was arranged at the request of the AU and Kenya to discuss "the indictment of sitting Heads of State and Government and its consequences on peace and stability and reconciliation'. At this stage Kenya with the backing of the AU sought the amendment of the Rome Statute's provision on immunities. Professor Githu Maigai, Kenya's Attorney-General argued for the immunities for sitting heads of state that exist at domestic level to also 'apply at the international level.' He suggested that the Court's pursuit for accountability was negatively impacting on Kenya and the Horn of Africa's peace and stability. At the end of the special segment, it was clear that the chances for amending the Rome Statute were remote.

Therefore, it appears as if the decision to include the immunity provision in the Draft Protocol for the proposed African Court in 2014 was reactionary to the realisation that substantive changes on the Rome Statute's immunity provision were slim. This view is also supported by the fact that the first draft protocol for the African Court of Justice and Human Rights did not have the immunity provision.

The argument that indictments against Heads of States or Governments leads to political instability requires serious assessment. It has been used against the application of universal jurisdiction and it is now emerging to justify the campaign against the Court's trial of President Uhuru Kenyatta and

Deputy President William Ruto. What is often forgotten is that there is not yet a single example to substantiate the claims that indictment of political leaders culminates into instability. In Sierra Leone the indictment of President Charles Taylor and his subsequent arrest appear to have led to peace and stability in both Liberia and Sierra Leone. In fact the inconvenient truth that majority of leaders who abuse their power to victimise their population would not want to face is that it is lack of accountability that often leads to conflicts and instability around the globe and in Africa in particular.

The Syrian exodus and perpetrators of international crimes **By Maarten Bolhuis**

The Syrian civil war has produced a refugee flow that is expected to pass the four million boundary before the end of the year. Although this massive displacement mainly burdens surrounding countries and only a very small fraction of these refugees reaches the European Union, in many European countries the influx of Syrian asylum seekers is still considerable. In the Netherlands, for instance, six thousand Syrians applied for asylum during the first eight months of this year. About ninety-two percent of all Syrian asylum seekers are currently granted a temporary residence permit. Right-wing politicians warn that this high acceptance rate will create a safe haven for 'terrorists and war criminals'. Considering the scale of the influx and the nature of the conflict, it is likely that there are indeed perpetrators of international or other serious crimes among the refugees. But how do the immigration authorities identify alleged war criminals when so many people apply for asylum and so many different parties commit crimes? And are concerns that they will find a safe haven justified?

At the end of the 1990s, Dutch media reported on encounters between Afghan torturers and their victims in a supermarket. This image of war criminals roaming around freely led to public outrage and induced a stricter application of Article 1F of the Refugee Convention in the Netherlands. This 'exclusion clause' excludes from refugee protection those against whom there are 'serious reasons for considering' that they committed international crimes, serious non-political crimes or acts contrary to the purposes and principles of the United Nations. By now, around nine-hundred asylum seekers, about half of them from Afghanistan, have been excluded in the Netherlands on the basis of Article 1F.

The high Syrian influx brings about many challenges for the specialised '1F-unit' of the Dutch immigration service. As the conflict is still ongoing,

the number of belligerent parties keeps growing and the conflict has become part of a regional war because of the foundation of the Caliphate by ISIL, access to accurate and up-to-date information is probably the biggest challenge this unit faces. To strengthen its information position, the 1F-unit started a project specifically aimed at gathering and disclosing information relating to the Arab Spring, including the Syrian civil war. Furthermore, international cooperation is strengthened, while IND employees processing Syrian cases receive additional instructions on how to detect asylum seekers to whom Article 1F might apply.

The number of 1F-exclusions of Syrians is on the rise. Until 2013, Article 1F was applied to only a handful Syrian asylum seekers in total. In the first six months of 2014 it was deemed applicable in fifteen cases already. This is a very substantial number considering that over the last five years the total annual number of exclusions in the Netherlands fluctuated between twenty-five and thirty. Despite the vulnerable information position of the immigration authorities, the number of exclusions is thus substantial.

Who are these excluded Syrians? A spokesman of the immigration service recently stated that in ten recent cases, the application of Article 1F related to persons associated with the Assad regime. This might mean that there are no opposition fighters among asylum seekers in the Netherlands, for instance because they are not in a position to get there or because they have less incentives to seek refuge abroad. It could also mean that there are no indications that opposition fighters who apply for asylum in the Netherlands have committed 1F crimes. Taking into account its vulnerable information position, another likely explanation would be that the immigration authorities have difficulties recognising opposition members or getting enough information to support the conclusion that Article 1F applies.

Whatever the reason, a similar picture emerged with the exclusion of Afghan asylum seekers ten to fifteen years ago, in the sense that almost all of the excluded were associated with the formal government. Rather than the Taliban or Mujahedin, they were linked to the secret services of the communist Afghan government. And there are more similarities between the current Syrian and earlier Afghan refugee flow with respect to the applicability of Article 1F. For instance, while the influx is high, no one is forcibly expelled to Syria at the moment because of the *refoulement* prohibition in Article 3 ECHR. In practice, this means that the excluded individuals will typically stay – illegally – in the Netherlands until the situation will be safe enough for them to return. The

case of Afghanistan shows that such a deadlock situation can last for many years. As the Dutch government refuses to offer protection to people to whom 1F applies, even if their non-removability is durable, and the applicability of 1F is not lifted by the passage of time, the excluded Afghans continue to live in a situation which could best be described as a ‘legal limbo’. They have no rights and nowhere to go to. As long as Syria remains an insecure place it is foreseeable that excluded Syrians will meet the same fate.

Another similarity between the excluded Afghans and Syrians is that there is only a small chance that exclusion will be followed by criminal prosecution, either in the Netherlands or elsewhere. Despite the fact that the jurisdiction for 1F crimes has expanded and that Dutch police and prosecutors, with their specialised teams, are in a better position to secure evidence than fifteen years ago, prosecution on the basis of universal jurisdiction is hampered by the challenges inherent to investigating crimes which happened in an inaccessible and far-away country, possibly years ago. Extradition to Syria or any other country requires a government that is willing and a judicial system that is capable of prosecuting international crimes. A situation in which these requirements are fulfilled is, at least in the foreseeable future, not very likely to occur.

There is no prospect that the Syrian civil war will end any time soon. Refugees will keep coming and the number of Syrian 1F-exclusions will grow. Chances these alleged perpetrators will be prosecuted and can be deported in the near future are slim. As you read this, a new class of international pariahs who end up in a legal limbo is created. It is time for Dutch government to think of a sustainable policy to deal with these individuals.

Khmer Rouge Trials: justice delayed for old genocide crimes

By Thijs Bouwknecht

[Phnom Penh, 17 October] “This tribunal was established to find the truth and render justice, but in your first judgment against me two months ago you completely failed to do so. You did not reveal the truth, and you made a bitterly disappointing mockery of justice”, Nuon Chea uttered. On the programme was the start of a momentous fragment in the judicial reckoning with genocide crimes in Cambodia. But instead, proceedings took a drastic turn. Nuon Chea, better known as Brother Number 2, and his co-accused Khieu Samphan, decided to boycott their second trial. In a surprise – yet apparently coordinated – move, both defence teams packed their bags, marched out of the courtroom and left the court and their ailing clients behind in confusion. A much-delayed course of justice now

appeared also to become a derailed course of justice.

Earlier on that Friday morning, the Extraordinary Chambers in the Courts of Cambodia (ECCC) convened to kick off the first evidentiary hearing in 'Case 002/02', the second mini-trial in a severed case versus the two surviving Khmer Rouge notoriety. Before a crowded public gallery, filled with neatly costumed school children, villagers and a handful of international observers, presiding judge Nil Nonn, summarised the charges: "genocide, crimes against humanity and grave breaches of the Geneva Conventions of 1949, committed on the territory of Cambodia and during the incursions in Vietnam, between 17 April 1975 and 6 January 1979." Cambodian co-Prosecutor Chea Leang and her American colleague Nicholas Koumjian further sketched the specifics and silhouette of their charge sheet.

Leang first applauded the earlier judgement, dispensed on 7 August, saying that this "long-awaited day of justice finally arrived for the victims of the Khmer Rouge." But, in a confident tone, she added, "our work in this Court is not done." And indeed in 'Case 002/01', the now old and crippled Brother Number 2 and former head of State Samphan were only convicted of a sample of crimes against humanity. They received life sentences for crimes including persecutions, enforced disappearances and extermination, committed between 17 April 1975 and December 1977. According to the judgment the duo partook, along with the infamous Pol Pot (Saloth Sar) and others, in a joint criminal enterprise implementing a rapid socialist revolution. This 'great leap forward' towards utopia was enforced by policy of political killings and enforced displacement of people from cities and towns and between rural areas.

Over at least a million Cambodians perished during the evacuations, from starvation, overwork and ailment at countryside cooperatives and worksites. Still, a myriad of atrocities were unaddressed in the first chapter of the case. Now this second trial concerns another register of crimes, including the persecution of Buddhists, forced marriages and rape and extermination and 'smashing' (murder in Khmer Rouge jargon) of tens of thousands of Khmers at re-education camps and security offices. Most noteworthy, however, is the charge of genocide, a standardised euphemism for the 3 years, 8 months and 20 days killing spree in the Democratic Kampuchea. The word is echoed at the former 'Killing Fields' at the Choenung Ek Memorial, the S-21 torture museum and in general discourse. They are the *lieux de memoires* of endless and ever-escalating violence against Cambodians, which left a land of mass graves,

missing relatives and photographed victims. But the names of the Cham Muslims and the Vietnamese are merely mentioned in popular memory. Yet, the genocide charges only concern these two groups.

With the general narrative of 'the' Cambodian genocide in mind, the Prosecution sought to cautiously present the charge. Reluctant, uninspired and almost like a schoolteacher, international co-prosecutor Koumjian opted that there is no "hierarchy" of international crimes and explained that "genocide are certain acts done with the intent to destroy in whole or in part an ethnic, racial, religious or national group [...]." He underlined it cannot be committed against a political or economic group. It is because under the "technical" definition of genocide, he told the court, New People, bourgeoisie, political opponents and intellectuals do not qualify as targeted victims, only to ensure that these type of killings will be charged as 'extermination as a crime against humanity. Thus only the killing of the ethnic and Islamic Cham community members and the ethnic, national – perceived racial – Vietnamese people fall in the genocide categories. Nonetheless, their destruction was a "fundamental part of the Khmer Rouge doctrine. Even their anthem talks about 'blood turns to hatred'", Koumjian ensured.

But the case presented appeared less clear than the genocidal policy alleged. For instance, citing diverging statistics from academics, the number of estimated Cham casualties still varies significantly, between 90.000 and 455.000 Cham. Koumjian evaded this lack of factual clarity by saying that "even if the intent was not to kill every single Cham, the intent was to destroy the group." He carried on, relying on coded witness testimonies, that "... those who were killed – who were targeted – was anyone who'd insist on maintaining their Cham identity; those who insisted on practicing the religion, Islam; those who insisted on speaking their language; they would and could be killed for simply maintaining their identity. If you kill all of the people of a group who have the self identity of the group, you destroy the group. The group can't survive if they no longer have a language in common, religion in common, customs in common; if all those who practice and maintain that identify are killed the group will be destroyed."

The genocide against the Vietnamese (Yuan in Khmer) had been "different", the Prosecution alleged; a policy of transfers, expulsions, prisoner exchanges evolved into the killing of any "Vietnamese that could be found in Democratic Kampuchea [ed: DK]." The American Prosecutor underscored "none of them survived the DK regime, none of them" and quoted from the Revolutionary Flag (the Communist Party of

Kampuchea (CPK) magazine): "And now, how about the Yuon? There are no Yuon in Kampuchean territory. Formerly there were nearly 1 million of them. Now there is not one seed of them to be found." The crux is, implied Koumjian, that "all of these crimes were the result of a policy," and then questioned and answered, "who communicated these policies? Well, the person in charge of propaganda and education of the cadres was Nuon Chea. And the person who had the role of being the public face of the Khmer Rouge both internationally and within Cambodia was Khieu Samphan."

But when Nuon Chea entered the dock after lunchtime, he did not answer to the genocide allegations, other than saying he is "remorseful for that suffering" and that he accepts "moral responsibility for it" as one of the most senior CPK leaders. "However," he reiterated, "I never intended to cause such suffering." Up to one thousand pages long, he found the judgement a "simple story", just "a child's fairy tale." In Chea's view, it was the result of the Prosecution ignoring crucial evidence. He further claimed an unfair trial had led to his conviction, particularly because the Cambodian judges refused to call Heng Samrin (a former Khmer Rouge official who knows Chea for already sixty years and is now President of the Cambodian People's Party) as a witness, "even though he was obviously the most important witness in the whole trial" to testify to his character and the Khmer Rouge policies and decisions.

More fundamentally, Chea was waiting for a decision on his request to have four judges (three Cambodian and one French) removed from the new trial: "now that you have found me guilty in that first judgment, I believe that you now have a clear bias against me in this second trial [...] I simply cannot see how I can enjoy my fair trial right, to be presumed innocent until proven guilty, if you will continue to be part of this trial. It is impossible." He argued the judges left him no choice: "if you will not step down while your disqualification application is being decided [...] I will instruct my lawyers to leave the courtroom after Mr. Khieu Samphan has spoken and to boycott all further hearings in this second trial until the disqualification decision is issued."

Khieu Samphan also addressed the court, mainly agreeing with Chea. But for him, aged 83, it was also too much to work on his appeal and on the new trial simultaneously. "I have been tired and exhausted and I have fallen ill. I was admitted to hospital because I have overworked on the case against me." He then told the Chamber he could not "participate in the ongoing proceeding [...] under duress." His lawyers enhanced the argument, with

Anta Guissé saying the situation forced the defence "to choose between the plague and cholera" and Kong Sam Onn, recapping that in this case "we cannot catch two fish with one hand. Because, ultimately, both fish will slip away." Onn said "good bye to Your Honours from now on" and left the courtroom to prepare the appeals, a move that was followed by the two entire defence teams.

This disordered scene played out before some 450 live spectators, most of them children and villagers who had been brought to the court on the outskirts of Phnom Penh by an NGO chartered bus. They did not seem to be much upset. Perhaps it is because, for the hundreds of school children, the accused are from a distant – virtually unknown – era, the legalistics of the proceedings are tough to grasp and the politics of (international) justice still too complicated to see through. "For them, it is a day out to the city, with free lunches," explains a Cambodian law student, adding, "the violence of the Khmer Rouge past is too far away, they have other, modern-time, concerns on their mind, like their future." The same goes for the elderly villagers, he says. "And besides, most common Cambodians are confused about the trial because they were already convicted and sentenced for 'The Khmer Rouge Genocide', weren't they? Most people do not understand why they are back in court today."

Indeed, the mechanics of international(ised) justice often get into motion slowly, and in the case of Cambodia even more at a snail's pace. Almost forty years after the events, this is only the second case (the first concerned confessor Kaing Guek Eav, alias 'Duch', the former Chairman of the Khmer Rouge S-21 Security Center) and the first to deal with the genocide question. A ruling on these charges may never transpire, considering the age of the accused and the fact that the full conclusion of the case on appeal is only projected for 2019. Nuon Chea and Khieu Samphan may simply not outlive the trial and final judgement. And with allegations of corruption, political interference and financial hitches, a feasible third and fourth trial in the one and only courtroom at the Cambodia tribunal remains shrouded in mist. Cambodia's hybrid delayed justice experiment for old genocide crimes risks becoming a derailed justice, with no end station. The question remains if the trial will get back on track on 8 January next year.

Reparation for Victims of Collateral Damage: A Normative and Theoretical Inquiry By Alphonse Muleefu

My research [eds: PhD research, successfully defended on November 24th at Tilburg University, the Netherlands] on reparation of victims of

collateral damage was based on the premise that international law (at least in theory) provides for (a) sanctions and (b) the obligation to repair damages, on states or individuals that violate the laws of war, while those who cause collateral damage are neither condemned nor expected to repair the harm. The purpose of this research was to understand the reasoning behind that normative discrimination, and find out whether there are grounds (moral, policy or legal) on which reparation to victims of lawful incidents of war is justifiable or not.

The basic principle of International Humanitarian Law (IHL) – the principle of distinction – demands combatants ‘to distinguish between the civilian population and combatants and between civilian objects and military objectives (...) and to accordingly direct their attacks against military objectives.’ Apparently, this demand is straightforward; do not target non-combatants and civilian properties. However, the reality clearly demonstrates that it is very difficult to ensure that wars can end without causing unintended damages. That is why International Humanitarian Law prohibits only the direct targeting of civilians and causing excessive incidental damage in relation to the military objective and not all damages of war.

The legal basis for reparations under the laws of war – Article 3 of The Hague Convention related to Laws and Customs of War on Land and Article 91 of the Additional Protocol 1 to the Geneva Conventions – both provide for compensation in case of a violation. The fact that the right to compensation is tied on the existence of a legal violation tacitly excludes victims of collateral damage. The study concludes that there are historical reasons for this distinction. The development of the current laws of war was too much oriented on preventing and punishing some behaviour and not so much based on the interests of the victims. It was more about breach or crime prevention – and not so much about harm reparation. It has been argued that this approach has become both unjust and indefensible. Unjust because it cannot be said that victims of violations suffer more than victims of lawful incidents, and in situations of war, it is not even possible to make a clear distinction between victims of violations and victims of collateral damage. The main problem is that to determine whether an incident was lawful or not requires a subjective assessment which involves understanding the intention of those who caused the harm and not those who suffered it. Therefore, to provide reparation on the basis of unlawfulness of the harm is to ignore the fact that reparation does not only punish, but also repairs.

To solve this discrimination requires overcoming challenges of the existing legal reasoning. As

Reisman notes, ‘there is certainly nothing remarkable in the notion that the consequences of an illegal action should be repaired. But it does not follow, as a necessary consequence that compensation should not be owed to victims of lawful damages. But then, the question remains: on which ground is their right to reparation justifiable since collateral damage is not a violation?’

Some scholars have given a few suggestions including the use of human rights law, strict liability rules and the principle of equality. The human rights perspective is that providing reparation to victims of collateral damage is to defend the dignity of all human beings. It is to advance the idea that ‘all human beings have a right to live and to enjoy their property.’ The basis for this argument is that human rights are inborn to all human beings. Therefore, the mere existence of a war does not make them despair. There are two problems with this argument: First, human rights are not absolute; in certain circumstances, human rights can be derogated especially during the time of emergency. Second, reparation under human rights law is essentially a violation based, and providing reparation to victims of collateral damage basing on a violation argument would be rejected on a moral ground. Because we still need to keep the distinction between those who willingly kill civilians and those who kill them incidentally or accidentally.

For the strict liability argument: reparation should be based on the dangerous nature of war. Once harm is caused the injured should not be asked to establish the fault of the injurer but the existence of harm. It sounds plausible to make a parallel argument that since war is an equally (or a more) dangerous activity, that it should involve strict liability rules applicable in dangerous economic activities. However, given the difference – in nature and purpose – between economic activities and warfare, to compare collateral damage of war with rules governing dangerous economic activities is going too far, because reasons for going to war are slightly different from those of undertaking economic activities.

Those who suggest the use of equality principle argue that lawful damages of war are burdens worth sharing among all the beneficiaries of that war – the general population – just as other costs of war such as the cost of weapons and ammunitions. The major problem with this argument is that it is premised on an administrative law principle applicable in domestic matters, where victims share solidarity on the basis of taxation and nationality non-victims. It would be therefore difficult to extend that principle into the rules governing inter-state wars. The study concludes that tort law too is inadequate to provide

a ground for reparation to victims of collateral damage because it was developed to regulate the conduct between private persons.

After finding out that the existing practice and different fields of law do not provide a coherent ground for reparation to victims of collateral damage, I had to return to the basics of international humanitarian law and I focused on the term 'humanitarian'. Humanitarianism is a concern for the wellbeing of an individual as a human being. It is this spirit, the desire to reduce human suffering during war which contributed to the development of the laws of war, to the idea of humanitarian assistance (aid relief and services), and this same spirit has contributed to development of other concepts such as humanitarian intervention and the responsibility to protect. I therefore conclude that the desire to minimize effects of war should equally provide a ground to reparation for victims of collateral damage. The same idea that compels even an aggressed nation to fight justly – not to target innocent civilians of an aggressor nation – should be the same spirit that justifies providing reparation to victims of collateral damage once the damage is caused. Two elements are crucial for understanding this conclusion: First, the protection of civilians during war is based on their innocence (on their non-combatance status) and certainly that innocence continues even after the harm. Second, the duty to minimize human sufferings that is the main purpose of the laws of war becomes absolutely necessary after the failure of the initial protection, whether incidentally or accidentally. It should be clear that the desire to reduce the consequences of war is more relevant after and not before harm – and providing reparation to victims of collateral damage could contribute to achieving the *raison d'être* of the laws of war, which is, minimizing the human sufferings resulting from wars. Certainly, doing so could also contribute to principles of human dignity, equality and fairness.

**Lubanga trial ends with (un) reasonable dissent?
Some observations
By Thijs Bouwknegt**

[The Hague, 1 December] “All rise, the International Criminal Court is now in session. Please be seated.” Thomas Lubanga Dyilo, dressed in a light blue dashiki, put on his headphones, wringed his hands, blinked his eyes, kicked back, sat up again and then rested his head into his hands. He was nervous. Final judgement day had arrived. Finally. Over two and a half years after he was convicted for three war crimes, the International Criminal Court’s Appeals Chamber convened on a cold Monday afternoon to rule on the appeals of the former Congolese politician-styled warlord. His trial was flawed and unfair, he argues. It runs

contrary to the Prosecution’s appeal. They wanted his “manifestly disproportionate” 14-year sentence raised, without explicating with how much.

It was an historic day for international justice. This was the first time the ICC signed off an appeals judgement. But interest has waned, as if the world has forgotten about Lubanga and the endemic conflicts in the east of the Democratic Republic of the Congo (DRC). Empty seats remained in the public gallery, not even half of it to be filled with court staff, a handful of devoted journalists and a single NGO observer. Lubanga himself did not invite his family for the occasion, like most other defendants would do on this type of day. Also shining in absence were his victims. The only Congolese present represent the diplomatic corps. “Is this justice seen to be done?” asked a journalist. “Come on, it is appeals,” replies another. On Twitter, trial observer Iva Vukusic, was “wondering what victims get from listening to judgements. Unless you follow the trials regularly, this stuff is incomprehensible.”

And indeed, 3179 days after Lubanga was brought to The Hague, the trial that dealt with child soldiers in the mass violence that plagued the Congolese Ituri region in the early 2000s, ends with an anticlimax: a sober, legalistic and collegial review of the trial chamber’s first ever verdict and sentence. Flanked by four colleagues, Judge Erkki Kourala monotonously read out a summary of the 193-paged appeals judgement and 50-paged sentencing judgement. They took a distanced view; they would not assess the evidence again, but would “only intervene if the Trial Chamber’s findings were unreasonable.” Then, after the chamber dismissed Lubanga’s request to consider three new pieces of evidence, the former UPC leader overheard the rulings on his seven grounds of appeal, alleging abuse of his fair trial rights, a prejudiced Prosecutor and the lack of clear facts underlying his prosecution.

Point-by-point, Kourala listed how Lubanga had not substantiated or sufficiently argued his complaints, only to rule that the trial chamber had not acted beyond the limits of its discretion and that its findings were “not unreasonable.” All grounds of appeals were rejected, including those of the Prosecution, and the verdict and sentence rubber-stamped. But only by majority. Judge Sang-Hyun Song, only disagreed “partly” with his colleagues, on a legal note. According to the ICC’s President, Lubanga should have been convicted and sentenced for one crime of child soldiering and not separately for three ways of committing it [conscripting, enlisting and using children]. Only the Latvian judge dissented from the majority on fundamental grounds.

If it was up to Judge Anita Ušacka, Lubanga should not have been convicted at all. “In my view, the evidence relied upon by the trial chamber to convict Lubanga was not sufficient to reach the threshold of beyond any reasonable doubt,” she explained. “In practice they have applied a lower standard,” because, according to Ušacka, “the trial chamber was motivated more by the desire to create a record of events, rather than to determine the guilt of [the] individual to the standard applicable in criminal proceedings.” On that note, she expressed her hope “that future prosecutions of these crimes at the Court will adduce direct and more convincing evidence and preserve the fairness of proceedings, which lies at the heart of criminal prosecutions and should not be sacrificed in favour of putting historical events on the record.”

Ušacka’s dissent was a sharp indictment against the court’s fact-ascertainment dilemmas. She highlighted two well-known deficiencies in this case: insufficiently detailed charges and the absence of the requisite element of crimes. Regarding the indictment, she said it was mainly based on testimony of nine alleged child soldiers – whose testimony was found to be erratic – but that the “remainder of the allegations regarding a pattern of crime did not contain reference to a single identified victim, while the dates and locations were framed in unacceptably broad terms.” For five years, Lubanga had “no meaningful opportunity to challenge the evidence at trial” which was based on these nine individual cases, “yet he was ultimately convinced of the unspecific charges of a pattern of crime.” This approach has broader implications warned Ušacka, as “ultimately, even the factual conclusions of the Trial Chamber suffered from the same level of imprecision.”

On a similar level, Judge Ušacka, considered “that the evidence in this case was, in particular, not sufficient to establish that at least some of children in the UPC/FPLC were under age of fifteen.” She lamented the Trial Chamber’s cautious approach, saying that “estimating the age of individual based solely on his or her physical appearance is very complex and prone to error, even when scientific methods are used.” During trial, she explained, the three judges relied on age estimates given by lay witnesses, who often offered no explanations as to how they knew the age of children. Regarding video evidence, the Trial Chamber simply “found that the images spoke for themselves” while according to Ušacka, the children “are frequently only partly visible and their sizes are unclear in the absence of any objective comparator.”

She reminded the court of a trial-featured evidentiary video excerpt of a boy playing with an

insect, which in her view was “by far the strongest in terms of quality of the lighting, the clarity of the image and the close range of relevant individual.” But after the March 2012 judgement, Lubanga’s defence team had located the boy and called him to testify during the appeals hearings in May this year where he indicated “he was aged between 19 and 20 years at time that the video was filmed.” Another similar defence witness also testified, “that he was between the age of seventeen and eighteen” when filmed.

In Ušacka’s view “in light of the overall weakness of the evidence establishing that some children were under the age of fifteen, the submitted additional evidence in relation to Witnesses D-0040 and D-0041 clearly has the potential to demonstrate that the approach of the Trial Chamber was flawed and thereby have an impact on conviction.” She therefore strongly disagreed with the majority of the Appeals Chamber who dismissed the additional evidence only by saying “Lubanga could have presented this evidence at trial and is therefore not persuaded by his arguments as to why he failed to do so.”

It is no secret that the first trial at the ICC was marred by trials and errors. Based on a minimalistic, delegated and selective enquiry, it was stayed two times and faced considerable evidentiary challenges. These issues were extensively detailed in the trial judgement, narrating the prosecution’s negligence in parts of its investigation. Still, Lubanga received a very narrow conviction, not on the accounts of his alleged victims and neither because he had “meant to” conscript, enlist and use boys and girls in his militia but because, he “was aware that, in the ordinary course of events, this would occur.” This feeble record is now definite, as the majority of an appeals chamber who deemed it “not unreasonable” endorsed it. Ušacka’s dissent, however, will soon become a footnote in the ICC’s trial record. Yet, it leaves a rather dubious stain on the “beyond any reasonable doubt” standard applied in international criminal trials: one doubtful judge in a panel of five seems not to be reasonable enough to question the veracity of the evidence leading to convictions.

A LETTER FROM ... BEIRUT

By Rianne Letschert

If you have a chance at some point in your career to visit Beirut, I highly recommend it. It is a city with many faces; struggling on the one hand with day-to-day threats of violence and a continuous influx of refugees and on the other hand a booming city Centre where the luxury shops and restaurants are abundant. I find it hard to see the enormous difference between the haves and the haves-not in

this complex city. I have been there three times now and the last visit was from 1 to 5 September of this year. I go there for a specific task, namely to interview victims and relatives of the deceased who died during the attack on former Prime Minister Hariri who was assassinated on 14 February 2005. With him, 22 other people got killed and many more got injured. The victims I interview participate in the trial before the Special Tribunal for Lebanon which was set up in 2007 by the UN Security Council under Chapter VII of the UN Charter, which deals with threats to international peace. The STL is unique in international justice as it was set up to try the perpetrators of a terrorist attack and because it can try the suspects in absentia. The five suspects have been charged with nine counts, ranging from conspiracy to commit a terrorist act to homicide and attempted homicide and are all at large at the moment. Participating victims are represented by a team of lawyers and dedicated court staff to serve their interests. Their participatory rights are granted under condition. They have to prove that their interests were affected by the incident to be able to participate. My interviews are, when needed, translated by interpreters, and conducted in the office of one of the lawyers. During the last visit times were rather stressful; in front of the office, beheaded Lebanese soldiers (of IS violence) were brought to the military hospital which created a lot of tensions in the streets. I am always escorted by UN Security Guards who drive me through the busy traffic of Beirut, using the horns after each and every minute... When protected by them, you need to stay in the hotel located in the UN safe area, which is a bit far outside the city. But fortunately the guards are willing to stay out late to enjoy the wonderful Lebanese food. Cause one thing is sure; as far as I know, Lebanese food is the best in the world! I hope this amazing country, with its friendly people, gets a real chance for a peaceful future soon, instead of being confronted with internal and external unrest for already so many decades.

CONFERENCES

Conference: Towards a criminology of mass violence and the corpse

By: Jon Shute

As readers of this newsletter are all too aware, criminologists have only very recently begun to confront the mass atrocities committed on European soil and in the name of the imperial/ideological ambitions of member states. As we are all equally aware in the centenary year of the beginning World War I, much thought and ceremony has been devoted to the burial and remembrance of military combatants in the graveyards of northern France and elsewhere. Fitting as this may be, the tens of

millions of civilian deaths that occurred as an increasing proportion of all war dead throughout the twentieth century are not well commemorated, and to this total, we need to add the many more victims of mass crimes: war crimes, crimes against humanity, political repression and genocide. Very often, as remains the case in Spain, Bosnia, and numerous sites on the former Nazi-Soviet (1941-45) 'eastern front', the location and identity of the unexhumed dead are unknown.

In order to shed light on the uses made of, and the value and meaning ascribed to the human remains of supranational crimes of this nature, the European Research Council have recently funded a multidisciplinary four-year programme 'Corpses of Mass Violence & Genocide'. As part of this programme, and in association with the Manchester Jean Monnet Centre for Excellence, a two-day workshop was recently held in the University of Manchester School of Law, entitled 'Towards a Criminology of Mass Violence and the Corpse'.

Bringing together leading European scholars of crime and punishment whose work has touched on mass violence, together with experienced practitioners of forensic archaeology and humanitarian emergency response, the workshop had four aims: (i) to contextualise the area by analysing trends in the prevalence and nature of European mass violence and corpse disposal; (ii) to understand the socio-legal status and forensic value of cadavers, together with their potential criminological value; (iii) to describe theory and methods that can make sense of the treatment and distribution of dead bodies by perpetrators; and (iv) to understand the links between the legal/professional handling of corpses in peacetime and the illegal handling of them in times of conflict. In so doing, we hoped to lay some of the foundations for theoretical, methodological and practical engagement with the subject matter, better understand how societies do and do not come to terms with a legacy of mass violence, and assist in the important project of re-ascribing value to radically devalued lives.

In a lively two days, the organiser, Jon Shute (University of Manchester), made the case that the corpse radically extends the trauma of lethal violence in space and time, and that the discourse and action surrounding its location, identification and commemoration can often be an important space for the 'moral-emotional work' of transitional justice and post-conflict state building. Pieter Spierenburg (Erasmus University) took the long view of trends in lethal violence in Europe but also speculated on the possibility of inferring (pre-)historic mass violence from analysis of patterns of population movements as revealed through modern

genetic profiling. David Canter (University of Huddersfield) and Russell and Rebecca Dobash (University of Manchester) using varied methods and datasets, argued that there is pattern and meaning in 'peacetime' violence as revealed through homicide crime scene data. This perspective was radically extended to the analysis of mass graves in presentations by Ian Hanson (ICMP, Sarajevo), Patricia Furphy (Liverpool John Moores University) and Marco Guimaraes (University Sao Paulo) in connection with a variety of contexts of mass violence, including Bosnia, Cambodia and Brazil. Wayne Morrison (Saint Mary University of London) and Claire Moon (London School of Economics) gave erudite conceptual papers on the nature of confronting human remains of mass violence, from both criminological and 'forensic humanitarian' perspectives, while Caroline Fournet (University of Groningen) discussed the varied forensic meanings and use of human remains in international criminal justice settings. Finally, Tony Redmond (University of Manchester and Head of the UKs Disaster Emergency Response) and Paul Withers (Lancashire Police homicide unit) discussed trauma and trauma management when engaging in 'corpsework': dealing with the material and human consequences of mass death.

The papers are currently being prepared for a special issue of the British Journal of Criminology for publication in 2015/16.

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SELECTED NEW PUBLICATIONS

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

Bantekas, I. (2014). Criminological approaches to international criminal law, Cambridge University Press.

This volume is one of the few books to explain in-depth the international crimes behind the scenes of substantive or procedural law. The contributors place a particular focus on what motivates participation in international crime, how perpetrators, witnesses and victims see their predicament and how international crimes should be investigated at local and international level, with an emphasis on context. The book engages these questions with a broad interdisciplinary approach that is accessible to both lawyers and non-lawyers

alike. It discusses international crime through the lens of anthropology, neuroscience, psychology, state crime theory and information systems theory and draws upon relevant investigative experience from experts in international and domestic law prosecutions.

Buckley-Zistel, Susanne and Stefanie Schäfer (eds.) (2014). Memorials in Times of Transition. Intersentia

Over the past decades, the practise of and research on transitional justice have expanded to preserving memory in the form of memorials. Memorials often employ a common architectural language and a set of political and ethical claims dictate the effect memory can or should have after large-scale violence: providing public sites of commemoration and mourning, putting past wrongs right, holding perpetrators accountable, vindicating the dignity of victims-survivors and contributing to reconciliation.

Yet what are the general roles of memorials in transitions to justice? Who uses or opposes memorials, and to which ends? How – and what – do memorials communicate both explicitly and implicitly to the public? What is their architectural language? Questions such as these have long been pursued within the growing field of memory studies and provide valuable insights for researchers in transitional justice who mostly focus on the role of memorials as a mechanism to further some form of justice after the experience of violence.

The goal of this volume is therefore to situate the analysis of transitional justice within memory studies' broader critical understanding of the socio-political, aesthetic and ethical concerns underlying these memorial projects. It combines the two by providing a transnational selection of single case-studies that emphasise the global dimension of memory culture while couching it in current debates in the field of transitional justice.

Elias-Bursac, E. (2014). Translating evidence and interpreting testimony at a war crimes tribunal – working in a tug-of-war, Palgrave Macmillan.

How can defendants be tried if they cannot understand the charges being raised against them? Can a witness testify if the judges and attorneys cannot understand what the witness is saying? Can a judge decide whether to convict or acquit if she or he cannot read the documentary evidence? The very viability of international criminal prosecution and adjudication hinges on the massive amounts of translation and interpreting that are required in order to run these lengthy, complex trials, and the procedures for handling the demands facing

language services. This book explores the dynamic courtroom interactions in the International Criminal Tribunal for the Former Yugoslavia in which witnesses testify—through an interpreter—about translations, attorneys argue—through an interpreter—about translations and the interpreting, and judges adjudicate on the interpreted testimony and translated evidence.

Carney, J.J. (2014). *Rwanda Before the Genocide. Catholic Politics and Ethnic Discourse in the Late Colonial Era.* Oxford University Press.

The first English-language monograph on Rwandan Catholic history in over thirty years. The first post-genocide history to focus explicitly on the 1950s, a decade that established the political and ethnic narratives that dominated Rwanda's post-colonial period.

The book reveals how the supposedly primordial Hutu-Tutsi narrative was in fact muted during the early 1950s, overshadowed by black-white tensions in the church and other political narratives framed in non-ethnic terms. This book offers the first analysis of how the Catholic major seminary and other church institutions served as sites of contestation in Rwanda's late colonial ethnic disputes.

This research grows out of newly released archival material from the Missionaries of Africa archives in Rome. The author is the first researcher to consult archival material for the critical revolutionary years that culminated with Rwandan independence in 1962.

Between 1920 and 1994, the Catholic Church was Rwanda's most dominant social and religious institution. In recent years, the church has been critiqued for its perceived complicity in the ethnic discourse and political corruption that culminated with the 1994 genocide. In analyzing the contested legacy of Catholicism in Rwanda. Rwanda before the Genocide focuses on a critical decade, from 1952 to 1962, when Hutu and Tutsi identities became politicized, essentialized, and associated with political violence.

This study – the first English-language church history on Rwanda in over 30 years – examines the reactions of Catholic leaders such as the Swiss White Father André Perraudin and Aloys Bigirimwami, Rwanda's first indigenous bishop. It evaluates Catholic leaders' controversial responses to ethnic violence during the revolutionary changes of 1959-62 and after Rwanda's ethnic massacres in 1963-64, 1973, and the early 1990s. In seeking to provide deeper insight into the many-threaded roots

of the Rwandan genocide, Rwanda Before the Genocide offers constructive lessons for Christian ecclesiology and social ethics in Africa and beyond.

Cruvellier, Thierry (2014). *The Master of Confessions. The Making of a Khmer Rouge Torturer.* Ecco/HarperCollins.

An Eichmann in Jerusalem for the Khmer Rouge, Thierry Cruvellier's *The Master of Confessions* is a harrowing account of the trial of Duch, director of the regime's most brutal prison. Cruvellier paints a startling portrait of a war criminal contending with his past.

The Khmer Rouge entered Phnom Penh on April 17, 1975. Led by their secret prime minister, Pol Pot, the Communist revolutionaries brutally seized Cambodia, established the totalitarian state known as Democratic Kampuchea, and isolated themselves from the rest of the world. When the Vietnamese invaded in 1979, the international community discovered that the regime had murdered approximately two million people: a third of these had been executed, the others had been starved or worked to death.

On February 17, 2009, Duch (pronounced "Doïk"), who had served as the director of S-21, the regime's primary center for interrogation and execution, stood trial for war crimes and crimes against humanity. *The Master of Confessions* builds around the mysterious Duch, who, unlike any other Khmer Rouge operative prosecuted for war crimes, took responsibility for his involvement in the crimes, apologized to the victims, and pleaded guilty. In a deft, suspenseful narrative, journalist and witness to the trial Thierry Cruvellier asks: Is Duch the deviant monster depicted by the prosecutor? Or is he the genuinely remorseful, born-again Christian he claims to be? Was he a pawn of his Khmer Rouge superiors? Is he now a man just trying to face up to his past?

Cruvellier both recounts this unique trial and delves into the history of the Khmer Rouge's rule of terror, offering a psychologically penetrating and devastating look at the victims, the torturers, and the regime itself. Cruvellier captures the intense human drama of the trial as it unfolds – from ironic twists and banalities, to the illusions and disillusionments of the players, and finally to a stunning coup de théâtre. By offering readers a distinct view into the mind of a mass murderer, *The Master of Confessions* sheds light on one of the most storied genocides of our time.

Duch was sentenced to life imprisonment by the Extraordinary Chambers in the Courts of Cambodia in February 2012.

Ferrara, Anita. 2015. *Assessing the Impact of Truth Commissions: The Chilean Truth and Reconciliation Commission in Historical Perspective*. London, UK: Routledge.

In 1990, after the end of the Pinochet regime, the newly elected democratic government of Chile established a Truth and Reconciliation Commission (TRC) to investigate and report on some of the worst human rights violations committed under the seventeen-year military dictatorship. The Chilean TRC was one of the first truth commissions established in the world.

This book examines whether and how the work of the Chilean TRC contributed to the transition to democracy in Chile and to subsequent developments in accountability and transformation in that country. The book takes a long-term view on the Chilean TRC asking to what extent and how the truth commission contributed to the development of the transitional justice measures that ensued, and how the relationship with those subsequent developments was established over time.

It argues that, contrary to the views and expectations of those who considered that the Chilean TRC was of limited success, that the Chilean TRC has, in fact, over the longer term, played a key role as an enabler of justice and a means by which ethical and institutional transformation has occurred within Chile. With the benefit of this historical perspective, the book concludes that the impact of truth commissions in general needs to be carefully reviewed in light of the Chilean experience.

Jamieson, R. (ed.) (2014) *The criminology of war*, Ashgate.

The essays selected for this volume provide an overview of the range of issues confronting scholars interested in the complex and multiple relationships between war and criminality, and map the many connections between war, security, governmentality, punishment, gender and crime. The collection draws on the recent theoretical advances made by both criminologists and scholars from cognate disciplines such as law, politics, anthropology and gender studies, in order to open out criminological thinking about what war is, how it is related to crime and how these war/crime relationships reach into peace. The volume features contributions from key thinkers in the field and serves as a valuable resource for academics and students with an interest in the criminology of war. The essays selected for this volume provide an overview of the range of issues confronting scholars interested in the complex and multiple relationships between war and criminality, and map

the many connections between war, security, governmentality, punishment, gender and crime. The collection draws on the recent theoretical advances made by both criminologists and scholars from cognate disciplines such as law, politics, anthropology and gender studies, in order to open out criminological thinking about what war is, how it is related to crime and how these war/crime relationships reach into peace. The volume features contributions from key thinkers in the field and serves as a valuable resource for academics and students with an interest in the criminology of war.

Jenkins, Catherine and Max du Plessis (eds.) (2014). *Law, Nation-Building and Transformation; The South African experience in perspective*. Intersentia

In this volume, fifteen contributors from the disciplines of law, politics and sociology reflect on South Africa's transition to democracy and the challenges of transformation and nation-building that have confronted the country since the first democratic elections of 1994. The range of topics covered is expansive, in keeping with a broader than usual definition of transitional justice which, it is argued, is more appropriate for states faced with the mammoth tasks of reform and institution-building in a context in which democracy has never been firmly rooted and the existence of widespread poverty gives rise to the dual demands for both bread and freedom.

In the case of South Africa, the post-apartheid era has been characterised by wide-ranging attempts at transformation and nation-building, from the well-known Truth and Reconciliation Commission to reforms in education and policing, the promotion of women's rights, the reform of land law, the provision of basic services to hundreds of thousands of poor households, a new framework for freedom of expression, and the transformation of the judiciary.

In the light of South Africa's commitment to a new constitutional dispensation and to legal regulation, this volume focuses in particular, but not exclusively, on the role that law and lawyers have played in social and political change in South Africa in the post-apartheid era. It sets the South African experience in historical and comparative perspective and considers whether any lessons may be learnt for the field of transitional justice.

Kamuli, Raphael (2014). *Modern International Criminal Justice. The Jurisprudence of the International Criminal Court*. Intersentia.

Scrutinizing all the relevant case-law of the International Criminal Court (ICC), this book

elucidates the paradigm that the ICC's jurisprudence represents in international criminal justice. It presents in-depth knowledge of how contemporary international criminal justice preserves, departs from or extends the principles that have developed since the Nuremberg Trials. The author explains how the ICC affirms that the most serious crimes of international concern must not go unpunished.

The book explores all the relevant case-law since the ICC's inception, including its most recent judgments. It presents the clear universalist approach taken by the ICC, and demonstrates how this, both procedurally and substantively, distinguishes the Court from other international criminal tribunals.

The author further explains the solid embedment of human rights law and victim-based justice into contemporary international criminal justice. He particularly demonstrates how a jurisprudential balance is struck between the determination to end impunity and the need for a fair and impartial trial. With regard to victim-based justice, the book particularly elucidates the rights of the victims before the ICC to participate in the proceedings and to receive reparations.

This book is a primary and authoritative source for the interpretation of the Rome Statute – the governing instrument of the ICC – and the evolution of international criminal justice as a response to unimaginable atrocities that victimize humankind. It clearly demonstrates how the jurisprudence of the ICC attempts to remedy the deficiencies of earlier international criminal tribunals.

Karimunda, Aimé Muyoboke (2014). *The Death Penalty in Africa. The path towards abolition.* Ashgate.

Human development is not simply about wealth and economic well-being, it is also dependent on shared values that cherish the sanctity of human life. Using comparative methods, archival research and quantitative findings, this book explores the historical and cultural background of the death penalty in Africa, analysing the law and practice of the death penalty under European and Asian laws in Africa before independence. Showing progressive attitudes to punishment rooted in both traditional and modern concepts of human dignity, Karimunda, himself from a country that abolished the death penalty in 2007, assesses the ground on which the death penalty is retained today. Providing a full and balanced appraisal of the arguments, the book presents a clear and compelling case for the total abolition of the death penalty throughout Africa.

This book is essential reading for human rights lawyers, legal anthropologists, historians, political analysts and anyone else interested in promoting democracy and the protection of fundamental human rights in Africa.

The book presents another valuable contribution from African scholarship. The work challenges stereotypes by showing Africa as a highly diverse continent, and arguing for the uncomfortable truth of how for a century the death penalty has been used as an instrument of political oppression.

Llewellyn, Jennifer J. & Daniel Philpott (2014). *Restorative Justice, Reconciliation and Peacebuilding.* Oxford University Press

All over the world, the practice of peacebuilding is beset with common dilemmas: peace versus justice, religious versus secular approaches, individual versus structural justice, reconciliation versus retribution, and the harmonization of the sheer number of practices involved in repairing past harms. Progress towards resolving these dilemmas requires reforming institutions and practices but also clear thinking about basic questions: What is justice? And how is it related to the building of peace? The twin concepts of reconciliation and restorative justice, both involving the holistic restoration of right relationship, contain not only a compelling logic of justice but also great promise for resolving peacebuilding's tensions and for constructing and assessing its institutions and practices. This book furthers this potential by developing not only the core content of these concepts but also their implications for accountability, forgiveness, reparations, traditional practices, human rights, and international law.

Moffett, Luke (2014). *Justice for Victims before the International Criminal Court.* Routledge

Many prosecutors and commentators have praised the victim provisions at the International Criminal Court (ICC) as 'justice for victims', which for the first time include participation, protection and reparations. This book critically examines the role of victims in international criminal justice, drawing from human rights, victimology, and best practices in transitional justice.

Drawing on field research in Northern Uganda, Luke Moffett explores the nature of international crimes and assesses the role of victims in the proceedings of the ICC, paying particular attention to their recognition, participation, reparations and protection. The book argues that because of the criminal nature and structural limitations of the ICC, justice for victims is symbolic, requiring State

Parties to complement the work of the Court to address victims' needs.

In advancing an innovative theory of justice for victims, and in offering solutions to current challenges, the book will be of great interest and use to academics, practitioners and students engaged in victimology, the ICC, transitional justice, or reparations.

Ruvebana, Etienne (2014). Prevention of Genocide under International Law. An analysis of the obligations of states and the United Nations to prevent genocide at the primary, secondary and tertiary levels. Intersentia

Genocide is the crime of crimes which shocks the conscience of mankind the most because of the unspeakable damage and pain it causes. This book studies the obligation to prevent genocide under international law and more particularly the extent of that obligation under the Genocide Convention and customary international law.

Although, this obligation is recognised in public international law, the issue what this obligation actually entails has not received much attention in scholarly works and in practice. Even recent debates focused on intervention at the stage where genocide is about to be committed or is being committed, ignoring prevention at early stages. Yet, such early prevention is pivotal in order to effectively reduce the risk of genocide.

Drawing upon, inter alia, the 2007 Genocide judgment of the International Court of Justice, the author puts forward a distinction between primary, secondary and tertiary levels of prevention of genocide . Within this temporal structure, he analyses and applies the obligation to prevent genocide by states and the United Nations. This leads to a clarification of that legal obligation by filling it with concrete international legal measures to be taken by both states and the United Nations at each level, and by suggesting improvements which include the creation of national and international institutions to actively promote and monitor the prevention of genocide.

Scheid, D.E. (ed) (2014). The ethics of armed humanitarian intervention, Cambridge University Press.

The question of military intervention for humanitarian purposes is a major focus for international law, the United Nations, regional organizations such as NATO, and the foreign policies of nations. Against this background, the 2011 bombing in Libya by Western nations has occasioned renewed interest and concern about

armed humanitarian intervention (AHI) and the doctrine of Responsibility to Protect (RtoP). This volume brings together new essays by leading international, philosophical, and political thinkers on the moral and legal issues involved in AHI, and contains both critical and positive views of AHI. Topics include the problem of abuse and needed limitations, the future viability of RtoP and some of its problematic implications, the possibility of AHI providing space for peaceful political protest, and how AHI might be integrated with post-war justice. It is an important collection for those studying political philosophy, international relations, and humanitarian law.

Turgis, Noémie (2014). Transitional Justice in International Law (La Justice Transitionnelle en Droit International). Bruylant

La justice transitionnelle vise à tirer les conséquences de violations graves des droits de l'homme commises durant un régime répressif ou un conflit armé, sans remettre en cause l'équilibre instable de la société au moment de la transition, afin de restaurer la confiance dans le droit et les institutions et promouvoir la transformation vers un État de droit démocratique à même de prévenir la récurrence de ces violations. Tandis que la pression (normative et sociétale) est particulièrement forte durant la transition pour que les responsables soient amenés à rendre des comptes, ces États ne sont souvent pas en mesure de remplir leurs obligations liées à la commission de crimes de droit international et de respecter les standards internationaux pertinents. Les paramètres transitionnels sont en effet particulièrement contraignants et dictent la physionomie des stratégies de justice susceptibles d'être déployées.

Quelle est alors la place du droit international dans la justice transitionnelle ? L'équilibre recherché entre la pression normative internationale et les contraintes caractéristiques de cette période a-t-il trouvé une forme de reconnaissance en droit international ?

L'étude de la résolution progressive des problématiques de cette justice révèle la mise en œuvre d'un régime juridique spécifique, reflet d'une approche intérimaire de mise en conformité avec les règles pertinentes du droit international. Elle se concrétise par le recours à des mesures variées (pénales ou alternatives) déployées dans une démarche globale et inclusive, caractéristique d'une méthodologie propre à la justice transitionnelle.

À travers l'analyse des éléments clés de la justice transitionnelle et de ses interactions avec le droit international, l'ouvrage fournit une analyse globale des problématiques de la justice transitionnelle et

des difficultés principales rencontrées par les protagonistes de la transition dans la mise en place d'une stratégie de justice destinée à tirer les conséquences du passé.

Wemmers, Jo-Anne M. (2014). *Reparation for Victims of Crimes against Humanity: The healing role of reparation.* Routledge

Each year, countless people fall victim to crimes against humanity. These include widespread occurrences of systematic murder, torture, rape, disappearances, forced deportation and political persecution. Crimes against humanity constitute an attack on human dignity and as such they violate the human rights of the victim, as well as the laws of humanity.

In recent years, following the creation of the International Criminal Court, there has been a growing interest in the prosecution of offenders and, in particular, in reparation following crimes against humanity. While such measures are meant to provide justice for victims, victims are often forgotten or lost in legal debates about what constitutes reparation and who is eligible to receive it.

This book reaches beyond the boundaries of law and psychology and takes a multidisciplinary approach to the question of reparation for victims of crimes against humanity. Law does not take place in a vacuum and it is important to consider the impact of the law on the psychology of the victim, as well as the legal principles themselves. Herein lies the originality of this book, which bridges the gaps between psychology, victimology, criminology and law and will be of key interest to academics and students engaged in the study of these areas.

Werle, G. L. Fernandez, M. Vormbaum (eds.) (2014). *Africa and the International Criminal Court,* Springer.

This book sheds light on the present frictions between the AU, the ICC and the UN Security Council. Eminent experts in the field of international criminal justice, including judges and prosecutors of the ICC and other African judicial bodies, as well as international criminal law scholars, analyze and debate the achievements and shortcomings of interventions by the ICC in Africa. They propose ways in which international courts and domestic courts within and outside of Africa can cooperate and address fundamental issues of international criminal law, such as the implementation of the Rome Statute, deferrals of cases before the International Criminal Court and

the prosecution of crimes by third states on the basis of universal jurisdiction.

Researchers and practitioners in the field of international criminal law and related disciplines will benefit from the high-level experiences and proposals brought together in this volume. For students with a focus on criminal law and its international implications it is a source of information and challenges.

Wouters, N (ed) (2014). *Transitional Justice and Memory in Europe (1945-2013).* Intersentia

What lessons can we learn from history, and more importantly: how? This question is as commonplace as it is essential. Efficient transitional justice policy evaluation requires, *inter alia*, an historical dimension. What policy has or has not worked in the past is an obvious key question. Nevertheless, history as a profession remains somewhat absent in the multi-disciplinary field of transitional justice. The idea that we should learn lessons from history continues to create unease among most professional historians.

In his critical introduction, the editor investigates the framework of this unease. At the core of this book are nine national European case studies (post 1945, the 1970s dictatorships, post 1989) which implement the true scholarly advantage of historical research for the field of transitional justice: the broad temporal space. All nine case studies tackle the longer-term impact of their country's transitional justice policies. Two comparative conclusions, amongst others by the internationally renowned transitional justice specialist Luc Huyse, complete this collection.

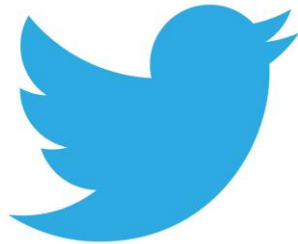
This volume is a contribution in the search for synergies between the agenda of historical research and the rapidly developing field of transitional justice.

MISCELLANEOUS

A few years ago the European Criminology Group on Atrocity Crimes and Transitional Justice (ECGACTJ) has been established. During the annual conference of the ESC this year in Prague we had 5 inspiring panels and a meeting. We hope to organize another set of equally inspiring panels at the next conference of the European Society of Criminology (ESC) in Porto, Portugal from 2-5 September. If you want to organize a panel or present a paper in one of our panels please contact either of the 5 chairs: Nandor Knust; Joris van Wijk; Alette Smeulers, Jon Shute and Susanne Karstedt. More information on our working group can be found on the website of the ESC: <http://www.esc-eurocrim.org/workgroups.shtml> but

more importantly we soon aim to launch our own website, twitter account and facebook page on which you can follow us. We are also in the process of planning a summer school for PhD students. So make sure to keep in touch if you are doing research on mass atrocities or transitional justice and if you want to become a member of our workgroup please get in touch with either of us.

Regular research 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.

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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.

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