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War Crimes Prosecution Watch

PILPG
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Volume 10 - Issue 13
September 7, 2015

War Crimes Prosecution Watch is a bi-weekly e-newsletter that compiles official documents and articles from major news sources detailing and analyzing salient issues pertaining to the investigation and prosecution of war crimes throughout the world. To subscribe, please email **warcrimeswatch@pilpg.org** and type "subscribe" in the subject line.

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ICC Presidency recomposes Trial Chamber VII in the case concerning Mr Bemba et al.
ICC/CPI
August 24, 2015

> **On 24 August 2014, the Presidency of the International Criminal Court (ICC) replaced two judges of Trial Chamber VII in the case The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido. Trial Chamber VII is now composed of Judges Marc Perrin de Brichambaut, Bertram Schmitt, and Raul Pangalangan.**
>
> The ICC Presidency granted the requests of excusal of Judges Olga Herrera Carbuccia and Chile Eboe Osuji, both previously assigned to Trial Chamber VII and who continue to be assigned, together with Judge Robert Fremr, to Trial Chamber V(a) in charge of the trial in the case of The Prosecutor v. William Samoei Ruto and Joshua Arap Sang.

Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido are accused of offences against the administration of justice allegedly committed in connection with the case The Prosecutor v. Jean-Pierre Bemba Gombo, consisting of corruptly influencing witnesses before the ICC and presenting evidence that they knew to be false or forged. The opening of the trial is scheduled for 29 September 2015.

ICC Presidency re-assigns the situation in DRC to Pre-Trial Chamber I
ICC/CPI
August 24, 2015

> **On 21 August 2014, the Presidency of the International Criminal Court (ICC) re-assigned the situation in the Democratic Republic of Congo (DRC)**

to Pre-Trial Chamber I, in view of the respective workload of the two ICC Pre-Trial Chambers and the need to ensure the proper administration of the Court.

On 17 March 2015, the ICC Presidency had issued a decision constituting Pre-Trial Chambers in which, inter alia, the situations concerning Côte d'Ivoire, Libya, Mali and Registered Vessels were assigned to Pre-Trial Chamber I and the two situations in the Central African Republic, together with the situations in Darfur, Kenya and Uganda were assigned to Pre-Trial Chamber II.

Pre-Trial Chamber I is composed of Judge Joyce Aluoch, Presiding Judge, Judge Cuno Tarfusser and Judge Péter Kovács.

The situation in DRC was referred to the Court by the DRC government in April 2004. The Prosecutor opened an investigation in June 2004. In the context of this situation, six cases have been brought before the ICC Judges who have issued 7 arrest warrants. One case is currently at the pre-trial stage; the case concerning Sylvestre Mudacumura. The ICC Prosecutor continues its investigations regarding this situation.

Ntaganda Trial opens at International Criminal Court
ICC/CPI
September 2, 2015

On 2 September 2015, the trial in the case *The Prosecutor v. Bosco Ntaganda* opened before Trial Chamber VI at the International Criminal Court (ICC) in The Hague, Netherlands. Mr Ntaganda is accused of 13 counts of war crimes and five crimes against humanity allegedly committed in Ituri, DRC, in 2002-2003. Trial Chamber VI is composed of Judge Robert Fremr, Presiding Judge, Judge Kuniko Ozaki, and Judge Chang-ho Chung.

The trial's opening started with the reading of the charges against Mr Ntaganda. Upon receiving confirmation from Defence Counsel Stéphane Bourgon, Presiding Judge Robert Fremr was satisfied that the accused understood the nature of the charges. The accused pleaded not guilty to the charges. The Court's Prosecutor Fatou Bensouda and Senior Trial Lawyer Nicole Samson took the floor for opening statements.

The hearings will resume tomorrow with the opening statements of the Legal Representatives of the two groups of Victims in the case, Sarah Pellet and Dmytro Suprun, as well as the opening statements of Defence Counsel Stéphane Bourgon. Mr Ntaganda may also make an unsworn oral statement. After a short break, the start of the Prosecution's presentation of evidence and the testimony of the first witness is scheduled on 15 September 2015.

Background: Bosco Ntaganda, former Deputy Chief of the General Staff of the Force Patriotiques pour la Libération du Congo (Patriotic Force for the Liberation of Congo or FPLC), is accused of 13 counts of war crimes (murder and attempted murder; attacking civilians; rape; sexual slavery of civilians; pillaging; displacement of civilians; attacking protected objects; destroying the enemy's property; and rape, sexual slavery, enlistment and conscription of child soldiers under the age of fifteen years and using them to participate actively in hostilities) and five crimes against humanity (murder and attempted murder; rape; sexual slavery; persecution; forcible transfer of population) allegedly committed in Ituri, DRC, in 2002-2003. Mr Ntaganda is in the Court's custody.

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Kenya

Official Website of the InternationalCriminal Court

Ruto Appeals ICC Decision to Allow Bensouda Use Recanted Witness Statements

All Africa
By Nancy Agutu
August 26, 2015

> **Deputy president William Ruto and his co-accused Joshua Sang are set to appeal the ICC decision for recanted witness statements to be admitted as evidence.**
>
> They argued that chief prosecutor Fatou Bensouda's use of the evidence, from witnesses who cannot be cross-examined, affects the fairness of proceedings.

In an application on Wednesday, Ruto's lawyer Karim Khan highlighted eleven issues that will be pursued.

Among them are establishing whether the judges erred in finding that the prosecution would not be seeking to alter anything previously entitled to the defense

The defense will also seek to find out whether an error was made in finding that "written statements and transcripts of interviews are... prior recorded testimony".

The team will also look into the interpretation of the requirement that a "witness must have failed to give evidence with respect to a material aspect".

Khan and his team will also seek to ensure that no mistakes were made in restricting assessment to reliability alone, and that all relevant factors that affected testimonies were considered.

The factors include "language, contradictions with other trial evidence and the absence of video/audio recording of interviews".

The Ruto defense suffered a major blow on August 20, when ICC trial judges allowed Bensouda to admit the recanted statements.

Bensouda said statements, including those of witnesses who have refused to testify or are missing, are significant to the case.

She said they provide evidence on matters including the DP's role in planning the 2007-2008 post-election violence.

The long-awaited ruling will now lead to closing submissions by Bensouda, after which Ruto and his co-accused Joshua Sang will file motions of no case to answer.

Barasa Opens Second Challenge against ICC Arrest Warrant

International Justice Monitor
By Tom Maliti
August 28, 2015

> **Former Kenyan journalist Walter Osapiri Barasa has opened a second challenge against an International Criminal Court (ICC) arrest warrant issued in connection with bribery allegations involving witnesses in the case against Deputy President William Samoei Ruto and another former journalist, Joshua arap Sang.**
>
> In an application filed on Friday, Barasa is asking Pre-Trial Chamber II to revoke the arrest warrant against him because, among other reasons, if he is detained by the ICC he is likely to be in detention longer than any possible sentence he may get if convicted. Barasa, through his lawyer Nicholas Kaufman, has asked the pre-trial chamber to issue him a summons instead of an arrest warrant. He has pledged to honour such summons because he does not have an "international network of supporters," nor is he wealthy.

This application is the first time Barasa is challenging at the ICC the pre-trial chamber's arrest warrant first issued under seal on August 2, 2013. The chamber unsealed the warrant in October 2, 2013. Barasa already has filed a separate challenge to the arrest warrant in the Kenyan courts. That case is at the Court of Appeal, which suspended the warrant until the main suit is heard.

Kenya is a member of the ICC and has made provisions of the Rome Statute, the founding law of the ICC, part of the country's domestic law. It is these provisions that the Office of the Director of Public Prosecutions sought to effect through the Kenyan courts.

At the ICC, Kaufman has challenged the pre-trial chamber's arrest warrant using Rule 117(3) of the ICC's Rules of Procedure and Evidence. Rule 117 is concerned with arrest warrants issued by a pre-trial chamber. The sub-section being invoked in Barasa's case allows a suspect to challenge an arrest warrant issued by a pre-trial chamber.

Kaufman has also challenged the reasons for issuing an arrest warrant covered in Article 58(1) of the Rome Statute. He has argued that his client cannot obstruct or endanger investigations or court proceedings, which is one of the provisions in Article 58(1) for issuing an arrest warrant. Kaufman has also argued his client is not an ongoing threat, which is another provision in Article 58(1). Kaufman has stated in the application that the prosecution is about to wind up its case and therefore they can no longer justify calling for Barasa's arrest on the basis that there are still attempts to corrupt witnesses as the prosecution had claimed in 2013.

"In light of all the aforementioned, the learned Pre-Trial Chamber is respectfully requested to revoke the warrant for the arrest of the Suspect and to substitute in its place a summons to appear, with or without conditions, pursuant to Article 58(7) of the Rome Statute," said Kaufman.

"The Suspect reiterates his readiness to cooperate with the ICC at the shortest notice while stressing that such cooperation is fully achievable without his pre-trial detention," Kaufman added.

Barasa appointed Kaufman as his lawyer in September 2013, a decision Kaufman informed the registry about in a September 20, 2013 email. Last week's application is the first one filed by Kaufman since the arrest warrant for Barasa was made public in October 2013.

Kaufman previously represented another Kenyan in a separate matter before the ICC. On September 28, 2012 he filed an application asking the then Trial Chamber V to rule on the legality of Dennis Itumbi's arrest six months earlier. In the application, Kaufman argued that Itumbi's arrest was due to the proceedings in the Kenya cases at the ICC and he wanted the chamber to find that the arrest was unlawful.

In its November 19, 2012 decision on the matter, Trial Chamber V concluded that the application was a preliminary step towards Itumbi demanding compensation if the chamber found he had been unlawfully arrested. The chamber rejected the application because it did not find his arrest in Kenya could be attributed to the prosecution or any other organ of the court. Itumbi now works as the Director for Digital Media in the Presidential Strategic Communications Unit.

Bensouda - OTP Will Again File Charges Against Kenyatta If Necessary Evidence Emerges
All Africa
By Ishmael Bundi
September 2, 2015

> **ICC Chief Prosecutor Fatou Bensouda has sent a strong signal that her office is ready to file fresh charges against Kenyan president Uhuru Kenyatta relating to the 2007/08 post election violence if new evidence emerges.**
>
> She was responding to a submission filed in early August by Victims' Legal Representative Fergal Gaynor, seeking a review of the Office of the Prosecutor's decision to suspend active investigations into Kenyatta's role in the PEV. Bensouda has said her team hasn't let the Kenyan leader off the hook and is in fact open to receiving new evidence and witness testimony on which a fresh case could be brought in the future.

In his 49-page filing on behalf of victims last month, Gaynor was scathing in his assessment of the OTP's handling

of the Kenyatta case.

He called it “ineffective” and accused Bensouda of “prosecutorial surrender and inaction”. Gaynor didn’t stop there. He also insinuated that Bensouda’s decision to withdraw charges against Kenyatta may have been influenced by “external influences” and that Bensouda may “operate […] with implicit deference to the interests of great powers”

Bensouda didn’t take too kindly to Gaynor’s insinuations:

“It is respectfully submitted that while robust advocacy is an obligation of any responsible counsel to his or her client(s), hyperbole, overly aggressive language and unfounded insinuations that bring the reputation of this Office, and the Court more generally, into disrepute are unbecoming and should not be permitted to distract from the real matters at issue”, she wrote disapprovingly.

Gaynor’s request for review included an annexure (Annex 1) containing the views of 702 PEV victims collected by the Legal Representative of Victims and his field staff in Kenya between May and June this year. Many of the victims expressed their displeasure with the withdrawal of charges against Kenyatta and their despair that their quest for justice has so far been drawn-out and fruitless.

Channeling the frustration of the PEV victims, Gaynor wrote that “thousands of victims of crimes against humanity were led to believe in a justice process at the Court for over five years, to endure three failed prosecutions without a single day of trial.”

Bensouda, in her reply, writes that she fully appreciates how lengthy and frustrating the push for justice has so far been for victims. She, however, adds that there’s no time limit, at the ICC or even in Kenya, to file fresh charges against Kenyatta.

“The Prosecution shares the victims’ frustration caused by the delay in giving full effect to their right to justice. However, there is no time period under the Statute to commence a prosecution, and crimes within the jurisdiction of the Court are not subject to any statute of limitations either at this Court or before relevant national authorities”, she writes.

This means that fresh charges against Kenyatta can be brought at any time in the future.

PEV victims can present evidence to Bensouda

Stressing that her office is keen to receive fresh evidence on which to anchor a new case against Kenyatta, Bensouda also invited PEV victims to get in touch with her office should they have any information that could help the OTP to build a case.

“In addition, although victims may not ‘participate’ in the Prosecution’s investigation, the Appeals Chamber has stressed that there is ample scope within the statutory scheme for victims with relevant information to transmit it to the Prosecutor. Victims may thus make representations to the Prosecutor on any matter pertaining to the investigations and to their interests”, she wrote.

The ICC chief prosecutor added that, going forward, she wanted PEV victims to know that the lines of communication were open and that, despite Gaynor’s views on the matter, her office wasn’t giving up on holding PEV perpetrators to account.

“The Prosecution will continue its dialogue with the victims, and as stated in its letter to the LRV, it will continue to monitor the Kenya Situation, listen carefully to anyone who comes forward with evidence, and file further applications for warrants of arrest or summonses to appear if circumstances change and the necessary evidence emerges”.

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Libya

Four Libyan soldiers killed in new battle with Islamist fighters in Benghazi: medics

Reuters
By Ayman Al-Warfalli
August 30, 2015

> **Four Libyan soldiers were killed and six wounded in fresh fighting with Islamist groups in the eastern city of Benghazi on Sunday, medics and military officials said.**
>
> Forces loyal to Libya's internationally recognised government have been fighting Islamist groups in the country's second-largest city Benghazi since last year, part of a wider struggle since Muammar Gaddafi was overthrown in 2011.

A tank battalion fought with Islamist brigades which had been trying to advance in the west of Benghazi, military officials said. Fighting raged until late in the evening.

Army forces backed by armed residents have regained some areas in Benghazi lost last year. But critics say their outdated war planes and helicopters lacking precision guns have damaged parts of the city without gaining much on the ground.

There was also fighting on Sunday between army units loyal to the official government and Islamic State outside the city of Derna to the east of Benghazi.

The air force flew a strike against Islamic State positions outside Derna, said a military spokesman. Both sides also clashed with ground forces in the same area.

Islamic State started this month an offensive to try retake Derna after a rival Islamist group had expelled it in June. Army forces are based outside Derna but have not tried to take the city, a jihadi hotspot.

The fighting on several fronts highlights the chaos in Libya, where armed groups back two governments vying for control. The official prime minister has been based in the east since the capital, Tripoli, was seized by a rival group which set up its own government.

Both sides command loose coalitions of former anti-Gaddafi rebels which have split along political, regional and tribal lines.

Islamic State has exploited the chaos by taking over several places, executing foreigners and launching attacks against embassies in Tripoli.

UN envoy to meet with Libya's Tripoli parliament ahead of talks

Yahoo News
August 31, 2015

> **The UN's special envoy for Libya will on Tuesday meet with representatives of the country's rival parliament based in Tripoli, which is not recognised by the international community, the UN said.**
>
> The meeting in Istanbul will likely focus on convincing the General National Congress (GNC) to take part in talks due to be held this week in Geneva aimed at ending violence in the north African country.

Libya has two rival parliaments and governments and has been torn apart since the international community helped to oust dictator Moamer Kadhafi in 2011.

The one in Tripoli is controlled by Islamist-backed Libya Dawn forces, and the internationally recognised government operates out of Tobruk, in the far east of the country.

"Bernardino Leon, will hold consultations... with representatives of the General National Congress to discuss ways to move forward the dialogue process with a view to reaching a peaceful solution to the political crisis and military conflict in Libya," a UN statement said.

"The meeting in Istanbul... will discuss GNC concerns with respect to the political agreement and ways to overcome them."

The September 3-4 talks in Geneva are the latest round in long-running peace negotiations between Libya's rival factions.

The United Nations has been brokering talks aimed at establishing a unified government.

The factions agreed in January to set up a unity government to restore the stability shattered since the 2011 revolution, but negotiations on modalities and over posts have run into hurdles.

U.S. defends seizure and interrogation of Benghazi terrorism suspect

The Washington Post
By Spencer S. Hsu
September 2, 2015

> **The U.S. government late Wednesday defended the legality of the seizure and interrogation of the man charged with leading the September 2012 attacks in Benghazi, Libya, that killed four Americans, saying federal courts have upheld such tactics before.**
>
> In an evening filing in federal court in the District, the Justice Department rebutted defense assertions last month that the arrest of Libyan terrorism suspect Ahmed Abu Khattala in a U.S. military raid south of Benghazi and his interrogation for 12 days aboard a U.S. Navy ship without a lawyer present violated his due process rights.

Abu Khattala has pleaded not guilty to charges including murder, conspiracy and destroying a U.S. facility in the Sept. 11, 2012, attack that killed U.S. Ambassador J. Christopher Stevens and three other Americans.“The apprehension of the defendant in Libya violated no law, treaty, or constitutional right,” wrote Assistant U.S. Attorney Michael C. DiLorenzo and other prosecutors with the national security section of the U.S. attorney’s office for the District.

At issue are the blended military and civilian policies adopted by U.S. officials to extract intelligence from terrorism suspects while preserving the ability to try them in civilian courts. Abu Khattala’s defense team said he was captured by U.S. Special Forces and held in military custody as he was taken to the United States aboard the amphibious ship USS New York.

On board, he was interrogated for five days by a special interrogation group comprising U.S. military and intelligence personnel as well as law enforcement officials. Information obtained by such efforts may further intelligence-gathering but cannot be admitted as evidence.

Then, a second group, comprising FBI agents, told Abu Khattala that he was under arrest and read him his Miranda rights. He requested a lawyer, but none was available on board for him. FBI agents interrogated Abu Khattala for seven more days, his lawyers said.

In filings Aug. 3, Abu Khattala’s attorneys moved for a dismissal of the case against him, calling his abduction, arrest and interrogation “well-planned lawlessness.”

But prosecutors said U.S. courts have allowed similar prosecutions, citing the case of Nazih Abdul-Hamed al-Ruqai, also known as Anas al-Libi, who died of liver cancer shortly before his trial in New York City in January.

Ruqai was captured in Tripoli in a U.S. military and FBI operation and was detained at sea until he fell ill. He was accused of involvement in the 1998 al-Qaeda bombings of two U.S. embassies in East Africa.

Abu Khattala’s “motion largely parrots the arguments recently advanced unsuccessfully by Ruqai,” prosecutors wrote.

Abu Khattala was charged in a sealed complaint in July 2013, indicted in June 2014 and became the subject of a superseding indictment last October that included charges that would make him eligible for the death penalty. The U.S. government in January 2014 designated Abu Khattala a terrorist and designated a group he helped lead, Ansar al-Sharia, a terrorist organization that holds anti-Western views and advocates the establishment of sharia in Libya.

Greek Coast Guard Seizes Libya-Bound Ship Carrying Weapons

NBC News
September 2, 2015

> **Greek authorities have seized a freighter carrying an undeclared shipment of weapons en route from Turkey to Libya, coast guard officials said on Wednesday.**
>
> A coast guard patrol boat raided the vessel on Tuesday, 20 nautical miles northeast of Crete. The freighter, with a crew of seven and which had sailed from the Turkish port of Iskenderun, was escorted to Heraklion port on the island.

The United Nations has imposed an embargo on weapons shipments to Libya, which is plagued by factional conflict.

"The ship's crew is being questioned and the content of its containers will be checked," a coast guard official said, declining to be named.

The coast guard provided no further details of what kind of arms the freighter had on board, or its ownership.

A Turkish foreign ministry spokesman confirmed the cargo included weapons but said it was fully documented and was destined for the Sudanese police force. The vessel was also carrying building materials for Libya, he said.

"If investigations by the Greek authorities show that the consignment is going to receivers other than those stated in the documentation, and if that is shared with us, naturally measures could be taken," foreign ministry spokesman Tanju Bilgic said.

Libya is divided between two rival governments battling for control, leaving a security vacuum being exploited by migrant smugglers and Islamist militants.

Bilgic said that the company which owned the ship was registered in the Greek port city of Piraeus and that the vessel had begun its journey in Famagusta in northern Cyprus and had also passed through the Egyptian port of Alexandria. It came to Iskenderun on Aug. 25 and left four days later, he said.

The vessel's documentation indicated that it was supposed to travel on to Misrata and Tobruk in Libya, before traveling back to Beirut, Bilgic said.

Pressure mounts for political solution in Libya

BBC News
By Rana Jawad
September 3, 2015

> **A UN-led attempt to broker a deal that would usher in a new Libyan unity government has been going on for nearly a year.**
>
> Libyans are facing increasing pressure from the West to reach an agreement, with the migrant crisis adding to the clamour for a positive outcome.

The envisioned Government of National Accord has been promised unreserved support by some key EU players, including the UK, Italy and France.

Protracted dialogues in times of conflict are nothing new, but they become excruciatingly difficult to steer when there is no dominating political movement or military force. And in this case there are multiple players.

All sides are vying for a resolution that is either completely in their favour, or gives them a slight edge over their counterparts.

For the past year, the East has housed an elected parliament in Tobruk that is internationally recognised but has no real power beyond what the armed factions who back them permit.

The capital, Tripoli in Western Libya was overrun by a loose alliance of militias that resurrected a former parliament, which installed its own cabinet.

The South is a place no-one really wants to talk about, though it has witnessed some of the deadliest tribal clashes to date and is a free-falling gateway for all things illegal.

All this also provided fertile ground for the militants of the so-called Islamic State to rise and mushroom the past 10 months.

Mandate ending

The Tobruk parliament's mandate ends in October, and there are worries that another big confrontation over control of the capital is looming if the term ends before a political agreement is reached.

Some believe that certain Libyan blocs in both camps are stalling the process precisely for that reason, with even more political and military posturing inevitable.

But this is Libya, and there are observers who argue - for good reason - that a bigger confrontation between rival militias could also be triggered if a deal is rushed.

Ahmed El-Abbar, an independent politician taking part in the dialogue, is eager to see a deal.

He said: "The fear of creating a constitutional power vacuum come October is what is now making all the parties involved expedite the process of reaching an agreement."

He remains hopeful because they have no other choice.

"The country is approaching several crises now, whether it's economical or even social."

The latest draft agreement was initialled by most of the political stakeholders in late July, but only after controversial points in it were annexed.

Since then, the Tripoli-based parliament, known as the General National Congress, has practically withdrawn from the talks.

A day before last week's round of talks in Morocco, the chief Tripoli representative at the talks resigned.

Ominous signs

Deep rifts within the two main political camps do not bode well for any agreement.

Meanwhile, opposing sides in Libya's conflict are building up their forces and making unilateral statements that suggest they have other self-serving plans.

There have been locally-led ceasefires in some parts of the country, and some believe this provides hope for a broader "Libyan solution".

But who could lead a unity government?

It does not appear as if anyone really has a clue at the moment. But that is what will be tabled this month when all sides submit a list of candidates.

Ideally, the country needs a unifying figure; someone who is politically and ideologically neutral and willing to risk life, limb, and shelter every day until a national force that is loyal to his government is forged.

Western hopes

Western nations, like the US, UK, France, Germany, Italy and Spain are banking that a new government of unity would ask them for help to stabilise Libya.

A European diplomat told me they envisioned establishing a "safety zone" in the capital that would protect foreign diplomatic missions using a foreign force.

That coalition would also simultaneously train a Libyan force to protect the government and its institutions.

But try asking foreign diplomats and Libyan politicians about where the "new" Libyan force candidates would be drawn from. You could hear a pin drop.

"We are looking for a minimal international footprint. We don't want to find ourselves in a position where we are drawn into combat," I am told.

But this plan is in its very early stages too.

Italy is envisioned to be the "framework nation" that would draw together the coalition.

"But we haven't even sorted out who would be a part of any foreign force," the diplomat explains.

So like everything else in Libya, there is a timing issue, and at this stage, it is on no-one's side.

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Cote d'Ivoire (Ivory Coast)

Official Website of the InternationalCriminal Court
ICC Public Documents - Situation in the Republic of Cote d'Ivoire

Ex-bodyguard of Ivory Coast's 'Iron Lady' appeals murder sentence
Yahoo News
August 24, 2015

> **The former bodyguard of ex-Ivorian president Laurent Gbagbo's wife has appealed a 20-year prison sentence for murder, his lawyer said on Monday.**
>
> Anselme Seka Yapo was this month convicted by an Ivory Coast military court for a murder committed during post-election violence in 2010-2011. He was in charge of ex-first-lady Simone Gbagbo's security and was arrested in October 2011.

"We have lodged an appeal against the decision," his lawyer, Mathurin Dirabou, told AFP.

Dirabou said the witness testimony was questionable and that medical evidence "revealed nothing".

Gbagbo himself is now awaiting trial in The Hague, and is the first former head of state to be prosecuted by the International Criminal Court, the world's only permanent war crimes tribunal.

His refusal to concede defeat after presidential polls in 2010 sparked a bloody stand-off in the world's largest cocoa grower in which some 3,000 people died according to the United Nations.

He was eventually toppled in April 2011 by current President Alassane Ouattara's forces backed by the UN and France.

Gbagbo was transferred to the ICC's detention unit in The Hague in November 2011 but Simone Gbagbo, the former first lady, was thrown in jail at home.

Since then, the Ivorian government has repeatedly refused to hand Simone Gbagbo, dubbed the nation's "Iron Lady", over to the ICC, where she too is wanted for crimes against humanity.

ICC success depends on its impact locally
Open Democracy
By Elizabeth Evenson
August 26, 2015

> **A permanent headquarters for the International Criminal Court (ICC) is set to open later this year in The Hague. The city, known for its institutions devoted to peace and justice, is in some respects a fitting home for the court.**
>
> But The Hague is not where the ICC matters most.

Where the ICC truly needs to matter is in the countries—and indeed in the communities— affected by the crimes the court will try. These are the places where victims and their families struggle to cope with the aftermath of mass atrocity. And these victims and communities—whether in Bangui, Benghazi, or Bunia—are the court's chief stakeholders and should be at the heart of the ICC's work.

Human Rights Watch's recently published a report on how the ICC is dealing with atrocities committed during the 2010-2011 post-election crisis in Côte d'Ivoire after Laurent Gbagbo lost the presidential election in late 2010 to Alassane Ouattara. It shows just how far the ICC still needs to go to make its work accessible, meaningful, and legitimate in local communities.

Since investigations began in Côte d'Ivoire in October 2011, the ICC prosecutor has only opened cases related to alleged crimes committed in Abidjan, the country's economic capital, and by forces affiliated with Gbagbo. This despite the well-documented facts that crimes were committed both by forces allied to the former president and those allied to Ouattara, the current president, and that many of the worst atrocities occurred outside of Abidjan.

There was a certain logic to the limited focus of the prosecutor's initial investigations. Gbagbo was already in detention and investigators had ready access to evidence within Abidjan. Investigating additional incidents would have increased logistical and security challenges.

But that initial decision to focus on pro-Gbagbo forces has persisted for several years. In the meantime, the prosecution's one-sided approach has polarized opinion about the court inside the country. The victims' high expectations for impartial justice before the ICC—fueled by the fear, especially among the victims of crimes by the Ouattara-allied forces, that they would never get it at home—have given way to frustration regarding a lack of progress in prosecuting all sides.

The ICC prosecution—which maintained all along that it would conduct additional investigations in Côte d'Ivoire —has now signalled that it expects to expand investigations in Côte d'Ivoire to all sides this year.

The one-sided prosecutorial approach thus far, however, was compounded by the Court's outreach efforts, led by the ICC Registry. Resource constraints meant the Registry oprioritized efforts to engage with victims of the four or five specific incidents in the cases opened before the court. A separate Registry unit with specific responsibilities to inform victims of their rights had some broader programs to reach other victims. But resource constraints also forced a narrower focus at times. Of course, it is essential to provide information to these victims, who have particular rights, but it should not come at the expense of making the ICC's proceedings more widely accessible.

The combined effect of both the prosecutor's failure to pick the cases that would address a broader range of crimes —and perpetrators—and the Registry's failure to reach out to all sides on the ground was clear in interviews with Ivorian civil society members. "Victims that belong to the other side do not believe in the ICC," said one human rights activist. "It is painful to say this because normally a victim does not have a side."

The ICC prosecutor should do more to take the experience of victims into account when making the difficult decisions about whom to prosecute and for what, including by strengthening consultation with victims. The experiences of victims will be diverse, and will raise expectations that will be difficult to ever fully meet. But since the court can only try a small fraction of those responsible for the worst crimes in any country, it is important for the prosecution to select cases that will have a broad enough impact to leave people in the country with the feeling that a measure of justice is being done. And to be effective, the Court's outreach and specialized programs directed to victims need to reach a much larger local audience than the direct victims whose cases form part of an indictment.

Expanded investigations in Côte d'Ivoire this year could mark a fresh chapter. There are also positive signs across

the countries where the ICC is investigating possible crimes that ICC officials—who have been making real efforts to address a number of the Court's growing pains—are looking anew at how they can improve their impact. Strengthened policy commitments to consult victims and a more open-ended investigative strategy by the prosecutor's office, including a commitment to consistently investigate all sides at the same time, as it is currently doing in the Central African Republic, hold real promise. Planned Registry reforms to bolster the court's offices on the ground are also essential.

Poor choices or strategy are not the only reasons the ICC's work lacks impact. A lack of resources is also to blame. The need to deal with cases in other countries with limited resources has been cited by the ICC prosecutor to explain the delay in opening additional investigations in Côte d'Ivoire . This is likely to be a persistent challenge for a prosecutor's office tasked currently with working simultaneously in eight countries. Funding for outreach across all the countries where the court has opened investigations has failed to keep pace with the court's needs.

ICC member countries have been reluctant to increase funding. Perhaps unsurprisingly so, given the financial constraints governments everywhere are facing. Indeed, the ICC's resources will never be unlimited, and Court officials will need to be strategic in their decisions. They likely could have made some different choices in Côte d'Ivoire even with the resources they had.

But mounting demands for accountability and the multiplying workload of the ICC mean that the court will not be able to deliver a more meaningful justice for victims and affected communities without at least some increases in the Court's resources in key areas. If ICC officials do their part by prioritizing local impact, ICC member countries should show they are willing to help fund a vision of a court that can finally make justice count where it matters—in the countries where the atrocities took place.

Educating Côte d'Ivoire's youth key to growth

Global Risk Insights

By Tolulope Ola-David

August 30, 2015

> **Four years after a post-election crisis in Côte d'Ivoire, in which 3,000 people were killed, the greatest risk to political stability and security in the country is its uneducated youth. Since the end of post-election crisis in 2011, vested interests in Cote d'Ivoire continue to hinder reforms to allow for more investments in education.**
>
> Since the end of the post-election crisis in 2011, two elections have been held in [Cote d'Ivoire], which indicates that the political process is progressively improving. Although the party of former president Gbagbo shunned the legislative elections of December 2011 and the municipal and regional elections of April 2013, clashes with pro-Gbago militias have reduced. Within the government coalition, however, tensions seem to be on the rise.

Uncertainty remains despite elections

Whereas the two elections show that the political process is progressively becoming normalised, there is still widespread insecurity in many parts of the country, particularly the northern region. Unidentified armed gangs, generally believed to be ex-combatants, continue to carry out attacks on roads near Bouaké and on major roads across the northern region.

On Tuesday, 18 November 2014, thousands of Républicaines de Côte d'Ivoire (FRCI) soldiers blocked streets in many cities, (including Abidjan and Bouaké, the second largest city in Côte d'Ivoire, with a population of about 536,189), in protest of alleged unpaid arrears of about USD 75 million. The soldiers went so far as to take over the state media buildings.

Former Forces Nouvelles rebels, who had helped put President Alassane Ouattara in power in 2011 and had been incorporated into a reconfigured state military, formed a majority of the protesting troops.

Youth education key to economic growth, reduced violence

While these are some of the risks facing Cote d'Ivoire, the greatest risk to political stability and security is the large uneducated, working population. Currently, Ivorian labour market does not stand a chance, as it cannot compete

favourably with its regional peers due to prevailing low levels of education in the workforce.

The greatest disservice Cote d'Ivoire has given to its political system is its failure to educate its youth. Despite the fact that Cote d'Ivoire has favourable demographics (potential large workforce), with 59 per cent of the population under the age of 24, the country has failed to turn its population into skilled workers.

Currently, at least two thirds of unemployed youth are between 15 and 24 years of age. Unfortunately, an investigation of current government education policies shows that the situation may not improve anytime soon.

The government of Cote d'Ivoire needs to take urgent steps to revive the ailing educational system of the country in order to prevent unemployable youths from becoming instruments of violence in the event that the ongoing crisis in the northern region escalates.

Given the prevailing security concerns in Cote d'Ivoire's northern regions, and the large number of weapons in circulation across the country, there are indications that the October 2015 presidential election could serve as a catalyst for renewed large-scale armed conflict.

For a state with limited resources seeking to prevent a return to conflict, youth education promises the dual benefits of preventing youth from entering a cycle of violence, and ensuring future economic growth.

Africa in the dock at the ICC
Expatica
September 2, 2015

> **The International Criminal Court, where the trial opens Wednesday of Congolese warlord Bosco Ntaganda, has launched investigations in eight African countries.**
>
> Here are details of the main indictments issued by the ICC, the world's first permanent international war crimes court.

- Democratic Republic of Congo -

The ICC sentenced Congolese warlord Thomas Lubanga in 2012 to 14 years in prison for conscripting children into his rebel army in 2002-2003, the court's first ever verdict. It upheld the decision on appeal in December 2014.

Ex-militia leader Mathieu Ngudjolo Chui was acquitted in December 2012 over a 2003 village massacre. However, another former militia leader Germain Katanga was sentenced in May 2014 to 12 years over the same attack.

Ntaganda -- nicknamed "The Terminator" -- has pleaded not guilty to 18 charges of war crimes and crimes against humanity over atrocities committed by his Patriotic Forces for the Liberation of Congo in 2002 and 2003, including using child soldiers and sex slaves.

Warlord Sylvestre Mudacumura, military commander of the Democratic Forces for the Liberation of Rwanda (FDLR), is wanted for crimes committed in the volatile eastern Kivu region.

- Central African Republic -

The Democratic Republic of Congo's former vice president Jean-Pierre Bemba, whose rebel army is accused of atrocities in the Central African Republic, has been detained by the ICC and charged with war crimes and crimes against humanity.

A second formal probe was also opened in September 2014 into an "endless" list of atrocities committed by armed militias since August 2012.

- Ivory Coast -

Former president Laurent Gbagbo is in custody on four counts of crimes against humanity over months of deadly fighting that erupted after he refused to accept defeat in a November 2010 presidential election. His youth leader, Charles Ble Goude, is also in ICC custody. The trial is expected to begin November 10.

An arrest warrant for Gbagbo's wife Simone, who was sentenced to 20 years in prison in the Ivory Coast, has also

been issued. The country has refused to transfer her to The Hague.

- Kenya -

Two Kenyans, including Vice President William Ruto, are on trial for their alleged roles in the post-election violence that gripped the country in 2007-2008. However, the case against President Uhuru Kenyatta collapsed in December.

- Libya -

Currently in custody in Libya, Moamer Kadhafi's son Seif al-Islam is accused of crimes against humanity for his alleged role in the repression of the popular uprising which led to the fall of his father's regime in 2011.

Libya and the ICC are competing for the right to judge him.

- Mali -

The ICC opened a probe in January 2013 into possible war crimes by armed groups during the conflict in Mali between northern Islamist insurgents and the army, backed by French forces. No arrest warrants have been issued.

- Sudan -

President Omar al-Bashir, 71, was indicted in 2009 on charges of war crimes and crimes against humanity over the conflict in the western region of Darfur. The following year he was charged with genocide over events in Darfur, where more than 300,000 people have died since 2003. Five other people are on the ICC's wanted list.

- Uganda -

The ICC issued arrest warrants for Joseph Kony and other commanders of the Lord's Resistance Army (LRA) in 2005 for crimes against humanity and war crimes, including the use of child soldiers and sex slaves. Dominic Ongwen was arrested at the end of January and transferred to the ICC.

- Others -

ICC chief prosecutor Fatou Bensouda has also launched preliminary investigations into alleged crimes in Afghanistan, Colombia, Georgia, Honduras, Iraq, Palestine and Ukraine, as well as in Guinea and Nigeria.

She told a press conference Wednesday: "When no-one else is doing justice for the victims, my office will fulfil this duty."

"We will not abandon the victims of atrocity crimes, not in the Democratic Republic of Congo, not in Africa and not in any of the 123 countries around the world which are members of the ICC."

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AFRICA

International Criminal Tribunal for Rwanda (ICTR)

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Chad

Suicide bombers attack Chad army camp; no soldiers wounded – sources
Reuters
By Madjiasra Nako
August 26, 2015

> **Two suicide bombers believed to belong to Nigerian Islamist militant group Boko Haram blew themselves up outside a Chadian army camp on Wednesday, but failed to inflict any other casualties, security sources said.**
>
> An officer at the Kaiga Ngouboua base in the Lake Chad region said the two bombers tried to get into the camp, but were pushed back by a guard and so blew themselves up at the entrance. No one except the bombers was killed, he said.

The bombing took place as 10 people, including the accused leader of Boko Haram in Chad and northern Cameroon, went on trial in the Chadian capital, N'Djamena, accused of involvement in deadly attacks in the city in both June and July. There was no evidence the two events were connected.

The campaign to crush Boko Haram has spread into Niger, Cameroon and Chad as well as Nigeria. The neighbouring countries have seen cross-border raids by the militants.

N'Djamena will host the command centre of a 8,700-strong multinational force to fight Boko Haram.

President Idriss Deby has said that Boko Haram, whose stronghold in northeastern Nigeria lies less than 100 km (60 miles) from N'Djamena, can be defeated by the end of the year.

In a further example of the violence, at least two people died in a suspected Boko Haram raid overnight on Tuesday in Niger, security sources said. The village of Abadam was the scene of a raid by unidentified planes in February in which at least 35 died.

The 10 people on trial were charged under terrorism laws with conspiracy, using explosives and drug trafficking, state prosecutor Laoumpambe Mahouli Bruno said.

They include Mahamat Moustapha, alias Bana Fanaye, the alleged chief of Boko Haram in Chad and northern Cameroon. Moustapha, 30, and born in northern Cameroon, was arrested in late June.

"I shoulder responsibility for my actions. I bought weapons and munitions and send them to Nigeria to Boko Haram. I am a soldier for my religion. I signed a pact with God. One day Jihad will come," he told the court.

10 Boko Haram Members Sentenced to Death in Chad
All Africa
By Bukola Ogunsina
August 29, 2015

> **Government of the Republic of Chad has sentenced ten members of the dreaded Boko Haram group to death on terror charges.**
>
> This follows the attack by the terror group on N'Djamena, a town close to the Nigerian borders in June and July which led to the death of over 40 people.

The attack of June 15, also destroyed a school and a police building, killing 38 people and wounded more than a 100 people while the one of July took the lives of 15 people.

The City prosecutor general Bruno Mahouli had initially indicated that the Boko Haram suspects are accused for criminal conspiracy, killings, willful demolition with explosives, fraud, unlawful possessions of arms and ammunition, and psychotropic substances.

This is said to be the first Chadian trial involving the Nigeria-based terror group

Death Sentences for N'Djamena Bombing Suspects
All Africa
August 29, 2015

> **Chadian authorities says 10 suspected members of Boko Haram have been sentenced to die by firing squad for their alleged roles in twin suicide bombings in N'Djamena. Those attacks in mid-June killed 38 people.**
>
> Chad's chief prosecutor announced the death sentences late Friday after a short closed-room trial before Chad's Special Criminal Court at a secret location. Mahouli Bruno, speaking on state television, said those "condemned will be shot."

The accused include 30-year-old Cameroonian Mahamat Mustapha, also known as Bana Fanaye, who Chadian authorities had accused of being the mastermind behind the N'Djamena attacks.

Boko Haram is an Islamist group based in northern and eastern Nigeria blamed for an insurgency that has claimed thousands of lives aince 2009.

Chad, Cameroon and Niger, which had all suffered attacks attributed to Boko Haram, together with Nigeria are in the process of forming a 8,700-strong regional force comprising troops and police to tackle the insurgents.

The suicide attacks on June 15 targeted a training center and a police building in N'Djamena, Chad's capital, which lies less than 100 kilometers (60 miles) from the border with Nigeria.

Attacks on remote villages in Nigeria

A civilian defense group in northeast Nigeria said on Friday it had learned that Boko Haram extremists had killed 28 people during attacks on two remote villages.

The first attack occurred on Tuesday night at Marfunudi in Borno state and left 24 dead. Extremists struck Thursday in the village of Kafa, killing four more residents.

The Nigerian army said it had found and destroyed an improvised explosives making facility in Borno state and arrested three suspected Boko Haram members.

Earlier this year, Chadian and Nigerian troops drove extremists out of some 25 towns. The insurgents have since resorted to hit-and-run tactics.

Doctors Without Borders said on Friday that 75,000 refugees from Niger, Nigeria and Chad had been displaced from their homes due to attacks near Lake Chad.

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Mali

Clan Warfare Trumps Diplomacy in Mali’s Fragile North

Reuters
By Emma Farge
August 30, 2015

> **The United Nations has deployed 10,000 peacekeepers and poured more than $1 billion into Mali but its efforts to end a three-year conflict are threatened by the reemergence of a centuries-old rivalry between Tuareg clans.**
>
> The U.N. Security Council renewed the mandate of its Mali force (MINUSMA) in June in the hope that it could enforce a peace deal signed that month in the West African nation, despite suffering the highest rate of losses of any active peacekeeping mission.

The deal, signed by both pro- and anti-government Tuareg-led militias, envisaged the overhaul of the Malian army to incorporate the militia fighters and its return to the desert north, much of which is controlled by the Tuareg groups.

The army's redeployment is supposed to allow it to tackle Islamist militants scattered, but not defeated, by French troops after they hijacked a Tuareg rebellion in 2012.

Now, a resurgence in fighting between the Tuaregs, who in total represent just 5 percent of Mali's 15 million people, could wreck everything.

Diplomats say buy-in from the northern armed groups was always weak because the Algeria-brokered deal, reached after months of shuttle diplomacy, was seen as a foreign imposition.

"The fundamental problem is that participants don't think this agreement can resolve the tensions that have always existed in the north," said Jean-Herve Jezequel, senior Sahel analyst at International Crisis Group.

"They think that it's really the force of arms that counts."

In defiance of the peace agreement, the Platform alliance of pro-government militias has been seizing territory in northern Mali and taking revenge on its rival while authorities in Bamako look the other way, security sources say.

The leader of the main pro-government militia GATIA, General El Hadj Ag Gamou, is a former mercenary who fought for Libyan leader Muammar Gaddafi and a member of the Imghad clan.

Power tipped away from the Inghads in favor of the Ifogha clan when fighters from Libya returned after the 2011 revolution to form a state they call Azawad. Arabs have also picked sides and some former jihadists have joined them.

Clashes broke out between Gamou's militia and the Ifogha-led separatist alliance, the Coordination of Azawad Movements (CMA), this month about 80 kilometers southwest of rebel stronghold Kidal, killing at least 20 people.

Sources in Kidal have reported an influx of fighters in recent days in pick-up trucks from Libya and Algeria, resulting in a possible CMA counter-attack.

"We will defend ourselves and our populations," CMA leader Bilal Ag Cherif told Reuters this week.

FORCED DISPLACEMENT

MINUSMA sources tracking compliance with the peace deal said they first noticed GATIA troops moving north towards Kidal in early July.

Initial findings of the U.N. human rights team backed by MINUSMA aerial footage seen by Reuters show forced displacements and daylight executions of rival clansmen by GATIA forces in several villages in the Gao region.

GATIA's Secretary General Fahad Ag Almahoud denies responsibility for the incidents, saying they are due to "inter communal tensions".

"We think the Malian army should hurry up and return and normalizes the situation," he told Reuters. CMA

fighters are also accused of arrests and looting in the same area before June.

Security sources and analysts say old rivalries are being stirred by competition for control of trafficking corridors for both cocaine and legal goods like food and cigarettes north to Algeria and east to Niger.

"Gamou would like to get back the position he had before the rebellion with control over trafficking. He wants a fiefdom," said Professor Jeremy Keenan, editor of Menas Associates' Sahara Focus publication.

Expansion may benefit armed groups if the peace deal proceeds as key army posts and development funding are expected to be distributed to Tuareg and Arab communities.

U.N. Special Envoy for the Mali mission, Mongi Hamdi, estimates that implementing the deal will cost an additional $1-$2 billion over two-three years.

While Gamou is ostensibly loyal to Bamako, analysts say he is unlikely to take direct orders. Many believe that even though President Ibrahim Boubacar Keita's government has condemned the occupation of Anefis, it is quite happy to allow GATIA to do its dirty work in the north.

"The government doesn't want peace in the north," said Keenan. "It wants its own back on the rebels and is thanking its lucky stars GATIA is there."

"PRISONERS IN THEIR OWN VILLAGES"

Worsening security in the north is slowing the return of the army and government officials who have been forced to leave Kidal. MINUSMA, seen as a soft target for Islamist militants, has camps in major towns but a weak presence in the desert.

Aid workers are struggling to deliver help to the more than 3 million Malians deemed food insecure, including tens of thousands displaced by fighting.

"People are prisoners in their own villages," said Eric Bertin Mukam, a human rights officer with MINUSMA in Gao.

Despite more than 3 billion euros in aid pledged for reconstruction at Keita's election in 2013, the streets of Gao are so full of potholes that cars take a parallel dirt track.

Kidal's airport runway is shut because it is heavily mined, security sources say.

MINUSMA is implementing a series of "rapid impact projects" to improve infrastructure, access to healthcare and electricity.

But many are not seeing the effects.

"I don't know who my state is," said Farock Ag Foukana, deputy mayor of Talataye, near Gao. "I haven't seen any authorities. Since 2012, there is nothing."

Africa in the Dock at the ICC
New Vision
September 2, 2015

> **Here are details of the main indictments issued by the ICC, the world's first permanent international war crimes court.**
>
> - Democratic Republic of Congo -

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Ivory Coast

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An arrest warrant for Gbagbo's wife Simone, who was sentenced to 20 years in prison in the Ivory Coast, has also been issued. The country has refused to transfer her to The Hague.

Kenya

Two Kenyans, including Vice President William Ruto, are on trial for their alleged roles in the post-election violence that gripped the country in 2007-2008. However, the case against President Uhuru Kenyatta collapsed in December.

Libya

Currently in custody in Libya, Moamer Kadhafi's son Seif al-Islam is accused of crimes against humanity for his alleged role in the repression of the popular uprising which led to the fall of his father's regime in 2011.

Libya and the ICC are competing for the right to judge him.

Mali

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Sudan

President Omar al-Bashir, 71, was indicted in 2009 on charges of war crimes and crimes against humanity over the conflict in the western region of Darfur. The following year he was charged with genocide over events in Darfur, where more than 300,000 people have died since 2003. Five other people are on the ICC's wanted list.

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Others

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not in any of the 123 countries around the world which are members of the ICC."

After Palmyra, Global Concern About Protecting Cultural Treasures
Science 2.0
September 2, 2015

> **There has been much public condemnation of the destruction of the Temple of Bel at Palmyra by Islamic State (IS), as well as the wider devastation being inflicted on the cultural heritage of Syria and Iraq by both IS and its opponents in Syria's civil war.**
>
> Both Syria and Iraq are party to all relevant treaties protecting cultural heritage, but this has not stopped the rampant violations. This implies that the problem doesn't lie with inadequate laws, but rather with compliance and enforcement.

This is not just a matter for states involved in conflict. A major problem with the international law on pillaging, looting and smuggling is that a number of prominent states, including the UK, are yet to ratify key treaties in this field.

That's a grave shame – especially since the international laws that protect antiquities and cultural treasures are actually fairly strong, at least on paper.

In black and white

International humanitarian law clearly prohibits the destruction or damage of cultural property in armed conflicts, in particular under the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two protocols. Pillage is also prohibited in international humanitarian law, and constitutes a war crime under the Statute of the International Criminal Court both in international and non-international armed conflicts.

In a separate branch of international law, regulations such as the 1970 UNESCO Convention ban illicit trade in stolen cultural property, whether in peacetime or in the thick of armed conflict.

While these laws may be difficult to enforce in these uncontrolled areas, the world could still be doing a lot more to secure compliance wherever possible – especially by those parties to armed conflicts who, unlike Islamic State, could be stopped from doing these things.

There are a number of workable ideas. Italy has proposed a specialized international rapid response force tasked specifically with defending cultural property from any abuse. Another way to ensure greater awareness and protection of cultural heritage would be to write its protection into the mandate of international peacekeeping missions, as has been done in Mali.

Some have suggested embedding cultural property specialist officers, akin to World War II's "monuments men", alongside deployed military forces participating in hostilities.

Both looting on the ground and illicit international trading demand not only laws, but serious international policing. Any effort with a chance of success must involve both war-torn states that provide the supply and the states that provide the demand, which often include Western countries.

Those states should be able to dedicate resources to recover stolen antiquities and hold those implicated responsible.

Emotional survival

The most crucial missing piece of the puzzle is support for the people these artifacts actually belong to, especially those who risk their lives to protect artifacts and cultural sites in their neighborhoods.

This can be achieved by providing training on preservation methods, as well as by supplying the resources and means needed to safeguard and record protected objects, including 3D imagery and printing to replace originals removed for safekeeping, or to recreate them if destroyed.

Not everybody can be expected to be as committed as Khaled al–Asaad, the prominent Syrian archaeologist who

was beheaded by IS for refusing to reveal where Palmyra's mobile artefacts had been hidden. But as was made clear by the efforts to secure Palmyra's and Timbuktu's antiquities, people all over the world have more than enough enthusiasm and determination to save their own cultures. They must be given the help they need to do so.

Above all, it must never be forgotten that, as is written outside the National Museum of Afghanistan, "a nation stays alive when its culture stays alive". This is in large part what made the destruction of Palmyra so devastating for Syrians.

Cultural heritage has a crucial role to play in reconciliation and unification of the nation in the aftermath of conflict, and in the emotional survival of people during it – and it's the world's responsibility to preserve it.

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EUROPE

The Court of Bosnia and Herzegovina, War Crimes Chamber

Official Website [English translation]

Accused in the Case v. Nikola Zovko et al. Enter a Not Guilty Plea .
Court of Bosnia and Herzegovina
August 20, 2015

At a plea hearing before the Section I for War Crimes of the Court of Bosnia and Herzegovina the Accused Nikola Zovko, Petar Krndelj, Krešo Rajič and Ivica Čutura entered a not guilty plea.

On July 16, 2015 the Court of Bosnia and Herzegovina confirmed the Indictment charging the accused with the criminal offenses as follows: Nikola Zovko - War Crimes Against Civilians under Article 173(1), Subparagraphs c) and e), as read with Article 180(2) of the Criminal Code of BiH; Petar Krndelj - War Crimes Against Civilians under Article 173(1), Subparagraphs c) and e), as read with Article 180, Paragraphs 1 and 2, of the Criminal Code of BiH; Krešo Rajič - War Crimes Against Civilians under Article 173(1)c) as read with Article 180(2) of the Criminal Code of BiH; Ivica Čutura - War Crimes Against Civilians under Article 173(1)e), as read with Article 180(1) of the Criminal Code of BiH.

The Indictment alleges that the accused Nikola Zovko, as Commander of the Čapljina Police Station, Police Administration Mostar, Internal Affairs Department Mostar; Petar Krndelj as Assistant Commander of the Police Station for Uniformed Police at the Čapljina Police Station, Police Administration Mostar, Internal Affairs Department Mostar; Krešo Rajič, as Military Police Platoon Commander; and Ivica Čutura, as an operative officer for patrol activities - sector leader at the Čapljina Police Station, Police Administration Mostar, Internal Affairs Department Mostar; during the war in Bosnia and Herzegovina and the armed conflict between the Army of Bosnia and Herzegovina and the Croat Defense Council, between July 19, 1993 or at about that date, and July 28, 1993 or at about that date, in the territory of the Čapljina municipality, in violation of the rules of international humanitarian law, committed the killing, inhumane treatment, torture (deliberate infliction of severe bodily or mental pain or suffering), infliction of great suffering or injuries to bodily integrity or health and unlawful detention of Bosniak civilians.

Oliver Krsmanović Sentenced to 18 (Eighteen) Years of Imprisonment
Court of Bosnia and Herzegovina
August 31, 2015

On August 31, 2015, following the main trial, the First-Instance Panel of Section I for War Crimes at the Court of Bosnia and Herzegovina delivered a verdict finding the accused Oliver Krsmanović guilty of the criminal offense of Crimes against Humanity under Article 172(1)h), as read with Subparagraphs a), e), f), i) and k) of the Criminal Code of Bosnia and Herzegovina (the CC BiH), as read with Article 29 and 31 of the CC BiH, in conjunction with Article 180(1) of the CC BiH. The Court of BiH sentenced the accused Oliver Krsmanović to 18 (eighteen) years of imprisonment.

Pursuant to Article 284(1)c) of the BiH Criminal Procedure Code (CPC BiH), the accused Oliver Krsmanović is acquitted of charges that by the actions described in Sections 9, 10, 11, 12 of this Verdict he committed the criminal offense of Crimes against Humanity under Article 172(1)h) as read with Subparagraphs a), f), and g) of the CC BiH, in conjunction with Article 29 and Article 180(1) of the same Code, and the criminal offense of Violating the Laws and Practices of Warfare under Article 179(2)d) of the CC BiH, as read with Article 29 and Article 180(1) of the same Code.

The accused Oliver Krsmanović was found guilty that between the spring of 1992 and the autumn of 1995, within a widespread and systematic attack launched by the army and the police of the Serb Republic of BiH and para-military formations, directed against non-Serb civilians, knowing of such an attack, as a member of the 2nd Podrinjska Light Infantry Brigade between May 19, 1992 and December 7, 1993, and then as a member of the 5th Podrinjska Light Infantry Brigade between December 1, 1994 and December 31, 1995, he committed and aided and abetted in the killings; forced disappearance of non-Serb civilians; serious deprivation of physical liberty in violation of the fundamental rules of international law; persecution of non-Serb civilians on national, ethnic and religious grounds, and other inhumane acts committed with the intention to inflict great pain, serious physical injuries and violation of health of non-Serb civilians.

The time the accused Oliver Krsmanović spent in custody shall be credited towards his sentence of imprisonment.

Pursuant to Article 188(4) and 189(1) of the CPC BiH, the accused is relieved of the obligation to reimburse the costs of the criminal proceedings.

Pursuant to Article 198, Subparagraphs 2 and 3 of the CPC BiH, the aggrieved parties are referred to take civil action to pursue their rights under property law.

This verdict may be appealed within 15 days of the day of receiving a written copy.

After the Court of BiH delivered the Verdict of August 31, 2015, pursuant to Article 126 and 126.a Subparagraph d), as read with Article 126.c and 126, Subparagraph e), of the Criminal Procedure Code of Bosnia and Herzegovina, the Court of BiH issued a decision ordering the following prohibitive measures against the accused Oliver Krsmanović:

· ban on leaving the place of residence (house arrest - relevant police officers shall make random compliance checks);

· ban on traveling (including temporary seizure of travel documents and ban on issuing new ones, as well as a ban on the use of ID card for crossing the state border of Bosnia and Herzegovina).

The prohibitive measures shall last for as long as necessary, but no longer than the moment of committing the accused to serve his sentence of imprisonment.

First Instance Verdict in Mensur Memić et al. Pronounced
Court of Bosnia and Herzegovina
September 2, 20155

Following the completion of the main trial, the Trial Panel of Section I for War Crimes of the Court of Bosnia and Herzegovina pronounced on September 1, 2015 the Verdict finding the Accused Mensur Memić and Nedžad Hodžić guilty of the criminal offense of War Crimes against Prisoners of War, in violation of Article 144 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CC SFRY), as read with Article 22 of the said Code, and the Accused Nihad Bojadžić guilty of the criminal offense of War Crimes against Civilians, in violation of Article 142, and the criminal offense of War Crimes against Prisoners of War, in violation of Article 144 of the CC SFRY.

Therefore, the Court sentenced the Accused as follows: Mensur Memić to imprisonment of 10 (ten) years and Nedžad Hodžić to imprisonment of 12 (twelve) years. With respect to the Accused Nihad Bojadžić, in application

of Articles 33, 38 and 41 of the CC SFRY, the Court assessed the sentence of imprisonment of 12 (twelve) years for the criminal offense of War Crimes against Civilians in violation of Article 142 of the CC SFRY, and the sentence of imprisonment of 10 (ten) years for the criminal offense of War Crimes against Prisoners of War in violation of Article 144 of the CC SFRY, and, in application of Article 48 of the CC SFRY, imposed on him a compound sentence of imprisonment for 15 (fifteen) years.

The time spent in custody shall be credited towards the imposed sentence with respect to the Accused Memić, Hodžić and Bojadžić.

The Court acquitted the Accused Dževad Salčin and Senad Hakalović of the charges for the criminal offense of War Crimes against Prisoners of War, and the Accused Nedžad Hodžić and Dževad Salčin of the charges for the criminal offense of War Crimes against Civilians.

The enacting clause of the Verdict reads, *inter alia*, that at the time of the armed conflict between the Army of the Republic of Bosnia and Herzegovina and the Croat Defense Council in the territory of Konjic Municipality, the Accused Nihad Bojadžić, as the Deputy Commander of the Special Purpose Detachment of the Army of the Republic of B-H known as *Zulfikar*, and the Accused Mensur Memić and Nedžad Hodžić, as members of the *Zulfikar* Special Purpose Detachment of the Army of the Republic of B-H, during a preplanned and prepared attack against the Croat population of the village of Trusina participated in the killing of prisoners of war and civilians.

Pursuant to Article 188(1) of the Criminal Procedure Code of B-H (CPC B-H), as read with Article 186(2) of the said Code, the Accused must reimburse the costs of the criminal proceedings and a lump-sum that the Court will decide on in a separate decision.

With respect to the acquittal part of the Verdict, pursuant to Article 189(1) of the CPC B-H, the Accused shall be relieved of the duty to reimburse the costs of the proceedings which shall be paid from the budget of the Court.

Pursuant to Article 198(2) and (3) of the CPC B-H, the injured parties are instructed to pursue claims under property law in civil action.

An appeal from this Verdict is permissible within 15 days from the day of reception of the written copy thereof.

Having pronounced the Verdict of 1 September 2015, pursuant to Article 126(2) and 126a (d) of the CPC of B-H, the Court of B-H rendered a decision imposing on the Accused Mensur Memić and Nihad Bojadžić prohibiting measures as follows:

· travel ban (with temporary withdrawal of travel documents together with the prohibition of issuance of new travel documents, and the prohibition of using ID card for crossing the state border of Bosnia and Herzegovina);

- obligation to report periodically to an authorized state body.

The pronounced prohibiting measures will be in effect as long as needed, but not later

than the date of committal to serve.

An appeal from this decision shall not stay its execution.

Prohibiting Measures Imposed on the Accused in the Case v. Ivan Kraljevic et al.
Court of Bosnia and Herzegovina
September 2, 2015

Deciding upon a motion of the Prosecutor's Office of BiH to order prohibiting measures, the Court rendered the Decision dated August 14, 2015 partially granting the Prosecution motion and ordered the following prohibiting measures upon the Accused Ivan Kraljević, Mate Jelčić, Slavko Skender, Stojan Odak, Nedjeljko Matić,Vice Bebek, Vinko Radišić and Dragan Miloš:

· travel ban (including a temporary seizure of travel documents and ban on issuing new ones, as well as the ban on use of ID to cross the state border of Bosnia and Herzegovina);

- mandatory reporting to the relevant body once a week;

· ban on meeting, contacting and liaising (directly or indirectly) with co-Accused, as well as witnesses mentioned

in the confirmed Indictment.

The imposed prohibiting measures may last as long as they are needed, or until a new decision of the Court, while a review of justification of the prohibiting measures shall be carried out on a bimonthly basis.

If the Accused violate any of the imposed prohibiting measures, they may be ordered into custody.

Ivan Kraljević, Mate Jelčić, Slavko Skender, Stojan Odak, Nedjeljko Matić and Vice Bebek are charged with the criminal offense of Crimes against Humanity and criminal offense of War Crimes against Prisoners of War while the Accused Vinko Radišić and Dragan Miloš are charged with the criminal offense of War Crimes against Prisoners of War.

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International Criminal Tribunal for the Former Yugoslavia (ICTY)

Official Website of the ICTY

Mladic Away at Wedding During Srebrenica Killings
Institute for War & Peace Reporting
August 21, 2015

Court hears that defendant was at a marriage celebration in Belgrade in the days after his troops overran the enclave.

Two defence witnesses in the trial of Bosnian Serb army chief Ratko Mladic told the Hague tribunal this week that he had been best man at their wedding, at a time coinciding with the Srebrenica massacre in July 1995.

Biljana and Zarko Stojkovic took the stand in turn this week to recount the events of July 16, 1995, when Mladic attended their church wedding in the Serbian capital Belgrade and a celebratory meal nearby.

The prosecution does not dispute that Mladic was in Belgrade for the wedding, but argues that he returned to the theatre of war the same evening and maintained contact with officers on his general staff during the day.

Mladic stands accused of genocide and other crimes relating to the Srebrenica massacre of July 1995. The eastern Bosnian town was declared a "safe area" in 1993 and a United Nations peacekeeping battalion was assigned to protect it. Despite this special status, the Srebrenica enclave was seized by Bosnian Serb forces on July 11. In the days that followed, more than 7,000 Bosniak men and boys were murdered by forces of the Bosnian Serb army, or VRS.

Zarko Stojkovic, a career soldier and currently a lieutenant-colonel, was a captain in the Yugoslav army at the time of his wedding.

According to the Stojkovics, Mladic and his wife arrived at their apartment at around 10 am on July 16 and stayed with them until the party left for the church ceremony, which took place between 12 and 2 pm. After that, the wedding party travelled together to the Dva Ribara restaurant a few hundred metres away where the Mladics remained until around 5.30 pm.

"He spent all that time with us and never left the restaurant, either he or his wife," Biljana Stojkovic told prosecuting lawyer Sarah Melikian. "Between 2 pm and 5.30, he was in the restaurant throughout that time."

She added that Mladic remained sitting at the head table throughout, only rising from it to give a toast.

Asked about whether he had gone to use the toilet at any point during the proceedings, she replied, "I really don't

remember that he did."

As to whether Mladic had been in possession of any kind of communications device at the wedding, she replied, "We certainly did not search our guests at the wedding, I hope you understand. I did not see that he displayed any such device or used it."

The couple said the photograph albums and video tapes of the wedding had gone missing from the home of Biljana Stojkovic's mother.

When Zarko Stojkovic took the stand, prosecutor Peter McCloskey continued the same line of questioning.

"Did you see the general in the apartment around 10 o'clock [in the morning]? Did he use any communications equipment or telephone?" McCloskey asked.

"No, he did not. Neither one," the witness replied.

"I have to ask, although it may seem illogical, in church or in front of the church... did the general have any communications equipment or use any?" the lawyer asked.

"No, not as far as I noticed, and do allow me to say that during the wedding party itself that ensued, no communications equipment was used, not a telephone either," Stojkovic replied.

There followed another discussion of whether it was possible that Mladic might have left the room during the wedding meal.

Judge Bakone Justice Moloto asked the witness, "During the dancing, anyone could have gone to the bathroom without you noticing. You were concentrating on dancing with your wife, is that not so?"

Stojkovic said Mladic did not get up to join the dancing and sat at the head table throughout.

McClosky asked, "Would it help your recollections if we told you that we've seen General Mladic's home videos of him at weddings, and he's quite a dancer. Doesn't that help you remember that he liked to dance at weddings, and that he actually danced at your wedding?"

"I cannot remember exactly," the witness replied.

The prosecutor turned to the transcript of a communications intercept by the Bosnian state security service at 4.15 pm on the day in question. This was, he said, "the time that you were at the restaurant".

"And we see that this is between the main staff duty officer - that means the main staff of the army of Republika Srpska who was located at the time in Crna Rijeka - and General Mladic," he said, "and the interceptors couldn't make out General Mladic's part of the conversation, but we can see from what the duty officer is saying he is giving information about the president '[who] called a short while ago'. And in our view that would be President [Radovan] Karadzic.

"He mentioned Pandurevic, other officials, and what I was wondering as you take a careful look at this intercept which the prosecution believes here is absolutely genuine - do you remember General Mladic mentioning anything to you about the goings-on over in Bosnia? Anything about the president, anything about Pandurevic, anything like that"?

"No, never," the witness replied.

Vinko Pandurevic, a high-ranking Bosnian Serb army officer, was found guilty of war crimes at Srebrenica and jailed for 13 years.

McCloskey asked again when the general had left the couple's wedding. Stojkovic replied that he left at 5.30 pm.

"Did he himself cite official duties?" McCloskey asked.

"He didn't mention any such," the witness replied.

The prosecutor then turned to Biljana Stojkovic's testimony in which she said Mladic "excused himself citing official duties".

"So you would agree with your wife, would you not, that she's correct, perhaps you didn't hear Mr Mladic say that to her, but she says he excused himself citing official duties. So would you support your wife on that?"

"I'm not sure about official duties, but I am sure that he excused himself and said goodbye," Stojkovic replied.

"You have no reason to believe that your wife is not telling the truth about that statement, do you?" McCloskey asked.

"Of course, since when one leaves weddings, one says goodbye to the bride and the groom, so I do not rule out the possibility that is what she was told. But I did not hear that," the witness said.

In a brief re-examination of Zarko Stojkovic, defence lawyer Branko Lukic returned to the topic of the wedding party.

"It has been put to you that the general liked to dance at parties. You told us that you do not remember that he danced. What happened in the Mladic family during that last year, a year and a bit before your wedding? Did some misfortune befall the family?" he asked.

"They lost their daughter, Anna," the witness said.

Lukic went on to ask, "What kind of status does the best man enjoy in our part of the world?"

"The best man, much like in the English culture, entails someone of high moral principle, exemplary conduct and family orientation," Stojkovic replied.

"Could we look at the intercept before us?" Lukic asked. "My learned friend Mr McCloskey told you that those intercepting such conversations were unable to hear General Mladic in this case. In the intercept itself, among the words uttered by the participants, there is no mention of General Mladic?"

"Yes, that is correct."

"At 4.15 on the day of your wedding, to the best of your recollection and to the best of your knowledge, would it have been possible for Mr Mladic to establish radio communication with the main staff of the VRS in Crna Rijeka?"

"No," the witness replied.

"Mr Stojkovic, let me just ask you this," the defence continued. "Would you say you were drunk at your own wedding?"

"No way," the witness replied.

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Domestic Prosecutions In The Former Yugoslavia

Could Thacki, Ceku And Other Kosovo's Leaders Stand Trial For War Crime?

InSerbia News
August 20, 2015

The creation of a special court on war crimes was only recently approved by the authorities of the self-proclaimed republic of Kosovo.

The creation of a special court on war crimes was only recently approved by the authorities of the self-proclaimed republic after a year of intense international pressure.

According to the newspaper, investigators from Kosovo will be working with the court that will be based in The

Hague, though they are concerned that Pristina establishment might target them for prosecuting their friends and former comrades-in-arms.

The first cases to be reviewed by the new court are linked to a report by Swiss politician Dick Marty regarding the alleged illicit organ trafficking in the 2000s involving high-ranking KLA officers.

One such case details the killing of 14 Serbian peasants on July 23, 1999 in which, according to an investigation by UNMIK, the subordinates of Hashim Thaci were involved. The new court should probably consider the bitter experience of the International Criminal Tribunal for Yugoslavia, when dozens of witnesses in cases involving KLA officers died in murky circumstances.

Fadil Lepaja, a political scientist from Pristina, told Sputnik that today witnesses should feel themselves safer than before because Kosovo politicians and the public opinion have a much lesser influence on the new court. He pointed out that previously the crimes of former KLA members were investigated by courts set up by EULEX and UNMIK, which were subjected to constant pressure by the accused themselves and suffered from corruption.

Former Kosovo MP Rada Trajkovic also noted that virtually all of the KLA leadership was in bed with the Western intelligence services.

It remains unclear whether these agencies will attempt to protect their 'assets.' But if the international community intends to expose those who conducted systematic ethnic cleansing and targeted people based on their ethnicity to murder them and harvest their organs, the guilty must pay for their crimes.

Croatian War Criminal Arrested After Decade On Run

Balkan Transnational Justice
August 24, 2015

The state attorney's office in the city of Split confirmed on Monday that former Croatian military policeman Bungur was arrested near Sibenik two days earlier.

The Croatian supreme court sentenced Bungur to six years in prison in absentia in 2007 for war crimes against Serb civilians at the Lora military prison camp in Split between March and September 1992.

In the case which was codenamed 'Lora 1', the court found that Bungur, along with six other military policemen, participated in the physical and mental abuse and torture of Serb civilians, in the course of which two of them were killed.

Bungur,who has been on the run since 2005, was transferred to Split remand prison after his arrest. There he will await trial for other war crimes allegedly committed at the military prison camp, in the case codenamed 'Lora 2'.

In the 'Lora 2' case, Bungur is accused of war crimes against Serb war prisoners at the military prison camp in 1992, during which three prisoners were killed. Their bodies were later exhumed in Livno in Bosnia and Herzegovina.

The start of the 'Lora 2' trial at Split county court is scheduled for September.

Another case known as 'Lora 3', which centres on alleged war crimes committed against Yugoslav People's Army prisoners, mostly Montenegrins, is still being investigated by the Croatian state attorney's office.

Bosnia Charges Prosecutor With War Crimes Case Negligence

Balkan Transnational Justice
By Denis Dzidic
August 26, 2015

Disciplinary prosecutor Mirza Hadziomerovic told a status conference on the case on Wednesday that Lecic was charged because he failed to look into the contents of a criminal complaint within an investigation for war crimes against Serb civilians in the village of Cemerno near Sarajevo from 2007 until early 2012, unacceptably delaying its progress.

According to Hadziomerovic, Lecic acted negligently because the case was not active for four years before being transferred to another prosecutor.

"This had a significant influence on the length of the entire proceedings and this investigation in which we have known perpetrators, and in a war crimes case in which we have significant public interest," said Hadiomerovic.

Cemerno in the Ilijas municipality near Sarajevo was attacked in June 1992 by Bosniak forces and more than 30 civilians were killed. No one has been charged with any crimes committed there so far.

Last month, parliament in Bosnia's Serb-led entity Republika Srpska voted for a referendum on the state-level prosecution and court because of its objections to alleged bias against Serb victims.

But prosecutor Lecic said that although the case was given to him in 2007, it was not true that he failed to look into the criminal complaint until 2012.

He explained that as early as 2009, he told the then head of the Bosnian state prosecution war crimes department, Vesna Budimir, that the case was about crimes in the Sarajevo region and not the Central Bosnia region for which he is responsible.

"Chief Budimir said that my team should send the case back to the registry office, which we did. The case stayed there for a while. When the electronic system for tracking cases was opened, you can see that I am not listed in charge of this case," said Lecic.

"In 2012, a letter came in connection to this investigation and someone from the registry office came to me and said that the case is still listed as mine. I then filed an official request to transfer the case to the Sarajevo team," he added.

Lecic said that in 2010, he and an associate conducted an analysis of all his cases, in which he mentioned that the Cemerno criminal complaint had been reviewed and that he recommended that it be transferred to another prosecutorial team.

The High Judicial and Prosecutorial Council disciplinary commission scheduled the main hearing in the Lecic case for September 11.

Serbian War Criminal Sainovic Returns To Belgrade

Balkan Transnational Justice
By Igor Jovanovic
August 27, 2015

Sainovic told reporters after he arrived at Belgrade airport late Wednesday that he was not guilty of war crimes but felt responsible for what happened during the conflicts in the 1990s.

"I will not give heroic speeches and I will not say that I sleep peacefully and my conscience is clear because someone who lived through war, as I did, cannot sleep peacefully. I am not guilty, but I feel responsible," Sainovic said.

Serbian media reported that Sainovic was greeted by his relatives and senior officials from the Socialist Party of Serbia, which is a member of the ruling coalition in the country.

Sainovic said that he and other Serbian officials was convicted by the International Criminal Tribunal for the Former Yugoslavia (ICTY) in The Hague as individuals, which meant that "the Serbian people were not convicted" as a whole.

The ICTY last January reduced Sainovic's initial sentence from 22 to 18 years in prison for the violence during the Kosovo war, which resulted in more than 11,000 people being killed and more than 700,000 Kosovo Albanians expelled.

According to the verdict, Sainovic had the intent to forcibly displace part of the Kosovo Albanian population and thereby change Kosovo's ethnic balance to ensure continued control over it by the Federal Republic of Yugoslavia (FRY) and the Serbian authorities.

The court also established that Sainovic was one of the closest and most trusted associates of Yugoslav president Slobodan Milosevic, which led to him taking a leading role during the Kosovo war.

"He was a powerful official in the FRY government, who not only relayed information to Milosevic and conveyed

Milosevic's instructions to those in Kosovo, but also had a great deal of influence over events in the province and was empowered to make decisions," the indictment said.

Lawyers for Sainovic, who served the last part of his sentence in Sweden, asked the ICTY in June to grant him early release, arguing that he had already served the required amount of jail time.

"The defence points out that Sainovic has served 11 years and 10 months of the total of 18 years of his prison sentence, which make almost two-thirds of the time spent," the defence motion to the UN-backed court said.

"His conduct while in UNDU [the UN Detention Unit] where he had spent more than 11 years has been commendable in every respect, as not a single objection was heard on account of his behaviour. In prison in Sweden, his behaviour was commendable as well," it added.

In the motion, Sainovic's lawyers also argued that he should get early release because of his health.

"His health is weak with diagnosed diabetes and glaucoma. His age and medical condition speaks in favour of this request for early release," the defence motion said.

Serbia Prosecutes Former Bosnia General For War Crimes

Jurist
By William Helbling
August 28, 2015

Serbian prosecutors on Thursday charged former Bosnian Army general Naser Oric [JURIST news archive] with war crimes against prisoners of war in 1992. Oric is accused of involvment in the killing of three Bosnian Serb prisoners of war in the villages of Zalazje, Kunjerac and Lolici. It is reported [Balkan Transitional Justice report] that Oric was arrested at the border between Switzerland and France on Wednesday. The charges brought against Oric come after he was acquitted in 2008 [JURIST report] of war crimes involving Serbians. The Serbian Justice Ministry [official website] plans to have Oric extradited to the country soon soon to allow him to sit for trial for the war crime charges.

The International Criminal Tribunal for the former Yugoslavia (ICTY) [official website] and the Balkan States continue to prosecute those accused of committing war crimes and crimes against humanity that left more than 100,000 people dead and millions displaced during the Balkan conflict of the 1990s. In April the Prosecutor's Office of Bosnia and Herzegovina indicted [JURIST report] 10 former Bosnian-Serb soldiers for war crimes committed during the Balkan conflict of the 1990s. Also in April Bosnian prosecutors indicted three men [JURIST report] for crimes committed against more than 300 Serb civilians between April 1992 and July 1993. In February the International Court of Justice ruled [JURIST report] that Serbia and Croatia did not commit genocide against one another's citizens during the 1990s war.

Barberton Man Admits To War Crimes In Bosnian Conflict, Agrees To Deportation In Plea Agreement

Cleveland.com
By Eric Heisig
September 2, 2015

A Barberton foundry worker admitted Wednesday in federal court to participating in an ethnic cleansing execution during the Yugoslavian wars in the 1990s and lying to get into the United States.

Slobodan Mutic, a Bosnian Serb, will be sent back to Croatia to stand trial for the killings after serving prison time in the United States on a charge of lying on U.S. immigration forms, according to a plea agreement.

Mutic, now 53, is wanted on a Croatian warrant for the deaths of Stjepan and Paula Cindric. During the conflict, which resulted in the splintering of Yugoslavia, Mutic was a member of the Yugoslav Army and later an army in the former Republic of Serbian Kriajina.

Court filings show that authorities believe Mutic, who now works at Akron Foundry Company, and another man shot the couple in their heads because of their ethnicity and because their son was affiliated with an opposing political party.

Mutic, who came to the United States in October 1999 after obtaining refugee status, was arrested in December. His plea agreement states that he lied on forms that asked whether he has ever been charged or imprisoned for

breaking any laws or "ever engaged in genocide ... or otherwise participated in the killing of any person because of race, religion, nationality, ethnic origin or political opinion."

Under his agreement, Mutic will spend two years in a U.S. federal prison. After that, he is expected to be sent to Croatia and will likely face trial for the killings.

"This nation is a haven for refugees, not human rights criminals," U.S. Attorney Steven Dettelbach said in a statement. "This defendant lied his way into this nation and he will be punished. And we also hope that he is held to account for any of his actions once he is returned to his home country to face justice."

Appearing in front of U.S. District Judge Patricia Gaughan on Wednesday afternoon, a gray-haired Mutic, who has a prosthetic leg and is hard of hearing because he stepped on land mines as a soldier, wore a gray polo shirt and blue jeans. He alternately responded to the judge's questions by softly saying "yes" or having an interpreter respond for him.

When Gaughan asked Mutic how he pleaded, he said, "I'm guilty." His interpreter then repeated this.

Mutic has been on electronic monitoring since his arrest and will remain that way until he reports to prison. Gaughan will sentence him on Jan. 6.

Mutic's attorney, Wesley Dumas, did not respond to a request for comment.

Mutic is one of hundreds U.S. officials have identified as being those they believe hid their involvement in carrying out war crimes when they came to the country as part of a wave of Bosnian war refugees fleeing the violence there.

The New York Times mentioned Mutic in an article about the government's efforts to deport these immigrants in an article in February.

More than 100,000 people died in the conflict from 1992 to 1995, most of them victims of Bosnian Serb attacks. In particular, the Bosnian Serbs carried out the killings of 8,000 Muslim men and boys in Srebrenica in 1995 and a campaign of ethic cleansing of the area's Muslim and Croat populations.

According to Mutic's plea agreement, he and Dragan Perencevic killed the Cindrics, who worked in dentists in the small town of Petrinja. Authorities believe he was drinking that night and that he robbed the couple of Italian and German currency, according to a transcript of an interview Homeland Security agents conducted with Mutic in 2012.

Court filings also show that Mutic was questioned about the killings in January 1992 and admitted to his involvement. He was held in jail but was released after a month.

In the 2012 interview with U.S. officials, though, Mutic was adamant that Perencevic, who lives in Serbia, was the driving force behind the killings.

"Everyone knows who he was and that his rifle was kept in police station - and that he could kill whomever he wanted," Mutic says of Perencevic in the transcript. "And he was doing that ..."

Assistant U.S. Attorney Matthew Cronin said after Wednesday's plea hearing that Mutic came to the U.S. from Romania in 1999. He was admitted as a refugee but applied for permanent residency a few years later.

During the application process, Homeland Security found out about Mutic's outstanding warrant for murder in Croatia, Cronin said. He said it took several years to piece the case together because he and agents needed documents from Croatia and to discuss and to discuss extradition back to Europe.

Throughout this time, though, Mutic kept a low profile in the Akron area.

"I don't think, if you're a war criminal, you're going to want to get noticed," Cronin said.

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Extraordinary Chambers in the Courts of Cambodia (ECCC)

Official Website of the Extraordinary Chambers
Official Website of the United Nations Assistance to the Khmer Rouge Trials (UNAKRT)

Pol Pot's Sister-in-Law, Indicted for Genocide in Cambodia, dies
Reuters
August 22, 2015

> **Ieng Thirith, the sister-in-law of Cambodian dictator Pol Pot, died on Saturday, nearly five years after she was indicted on charges of genocide and crimes against humanity, Cambodia's U.N.-backed war crimes court said.**

The 83-year-old former minister of social action during Pol Pot#39;s 1975-#39;79 "killing fields" regime, died in the old Khmer Rouge stronghold of Pailin in western Cambodia, the court said in a statement.

Ieng Thirith was married to former Khmer Rouge foreign minister Ieng Sary, who died in 2013. Her sister, Khieu Ponnary, was married to Khmer Rouge leader Pol Pot, who died in 1998.

The four were French-educated revolutionaries whose bid to turn Cambodia into an agrarian communist state led to the deaths of about 2 million people through execution and starvation.

The legal case against Ieng Thirith was stayed in 2012 after she had been found unfit to stand trial because of dementia, and she was released under judicial supervision, the court said.

Court Appoints New Tribunal Judge
Khmer Times
By James Reddick
August 25, 2015

> **The Extraordinary Chambers in the Courts of Cambodia confirmed Monday that Michael Bohlander will be taking over as the Tribunal#39;s international co-investigating judge. A German native, Judge Bohlander is replacing outgoing judge Mark Harmon, who is the third to step down from the position since the tribunal started.**

As the co-investigator, Judge Bohlander will decide the direction of cases 003 and 004, which have stalled in the last year as police have failed to carry out an arrest warrant for former navy chief Meas Muth and district commander Im Cheam.

Lars Olsen, spokesman for the court, said yesterday, "the investigations were and are ongoing," adding that the arrest warrants "remain in force." He said that Judge Bohlander will have to review the evidence in the two cases to decide if they warrant indictments.

The first two co-investigating judges were Siegfried Blunk and Laurent Kasper-Ansermet. Judge Blunk resigned after citing government obstruction in his work. Judge Harmon had similar issues, along with clashes with his Cambodian counterpart, You Bunleng. Mr. Olsen insists that Mr. Harmon#39;s resignation was "unrelated to events in the investigation."

Defense teams talk out on proceedings
The Phnom Penh Post
By Alessandro Sassoon
August 27, 2015

> **Both Khieu Samphan#39;s and Nuon Chea#39;s defence counsels walked out of proceedings at the Khmer Rouge tribunal yesterday midway through the prosecution#39;s document presentations following an overruled objection from Victor Koppe, Nuon Chea's defender.**

Koppe#39;s objection concerned the use of "written records of interviews" (WRIs), particularly in regard to whether the subject of those interviews, typically a witness, is dead or alive. Koppe challenged the reliability of WRIs, arguing that their use as documentary evidence is inappropriate.

Allowing the prosecution to quote from WRIs at length, he continued, was tantamount to a "closing argument situation".

Co-prosecutor Vincent de Wilde, however, held that the WRIs were perfectly acceptable.

Chamber president Nil Nonn at first overruled Koppe#39;s objection, though only in part, saying parties could "present such written records of interviews so long as parties can prove that the witness in the record of those interviews passed away".

Prosecutor William Smith, however, requested that the chamber allow all WRIs.

"As far as written records of interviews are concerned . . . we submit they are reliable, corroborative pieces of evidence we should be able to put before this chamber, whether or not the author of that statement is dead or alive," Smith said.

Nonn, seemingly revising his earlier ruling, clarified that, in fact, WRIs for living witnesses were permissible, and instructed the prosecution to continue.

Shortly thereafter, as the prosecution finished reading a lengthy WRI, Koppe interjected, demanding to know whether the witness in the statement was dead or alive.

However, when judge Claudia Fenz reiterated that all WRIs were admissible, Koppe announced his team "will officially withdraw from our document presentation because this is a farce".

The presentation resumed briefly before Khieu Samphan defender Arthur Vercken interrupted to similarly state his team#39;s withdrawal because it "does not see why it should continue partaking in something that resembles final statements more than anything else".

Both defence teams declined to comment on the withdrawal yesterday.

Smith characterised the walkout as "completely illogical", while civil party lead co-lawyer Pich Ang said it was "absolutely not appropriate".

Due to the defence#39;s "boycott", as Nonn called it, the court was forced to adjourn.

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Iraq and Syria

Grotian Moment: The International War Crimes Trial Blog

Security Council Condemns Use of Sexual Violence as 'Tactic of War' in Iraq and Syria

UN News Centre
August 28, 2015

> **The United Nations Security Council today condemned the use of sexual violence, in particular sexual enslavement and sexual violence "related to or resulting from forced marriage, committee, including as a tactic of war, in Syria and Iraq," and urged all parties to armed conflict to take all feasible steps to protect civilians from such "abhorrent" acts.**

In a statement to the press issued this evening, the Security Council announce that it had been briefed by UN Special Representative for Sexual Violence in Conflict Zainab Bangura on her visit to the Middle East and expressed concern over and condemned all forms of sexual violence in Syria and Iraq.

Council members recalled in their statement that rape and other forms of serious sexual violence in armed conflict are war crimes and constitute grave breaches of the Geneva Conventions. They urged the international community to remain united in the goal of holding those responsible for such crimes accountable.

Underscoring the need for all relevant parties in the region, while implementing counter-terrorism, peacebuilding and conflict resolution activities to take into account the importance of women's empowerment and the protection of women and girls at risk of sexual violence, the Council also expressed the need to bring conflicts in the region to an end in order to reduce the opportunity for sexual violence to be committed.

Members of the Security Council acknowledged the efforts of neighbouring countries in protecting refugees, including from sexual violence, and called on the international community to contribute to the United Nations humanitarian appeals for Syria and Iraq.

Islamic State's Destruction of Roman Temple in Syria is War Crime: UNESCO
Reuters
By Sylvia Westall
August 31, 2015

> **Islamic State's demolition of a renowned ancient Roman temple in the Syrian city of Palmyra is a war crime that targeted an historic symbol of the country's diversity, the U.N. cultural agency UNESCO said.**

Ultra hardline Islamic State militants blew up the temple of Baal Shamin, Syria's antiquities chief Maamoun Abdulkarim said, describing the destruction of one of the most important sites in the central city.

"Such acts are war crimes and their perpetrators must be accountable for their actions," UNESCO Director General Irina Bokova said in a statement.

She also condemned the killing of Khaled al-Asaad, an 82-year-old archaeologist who had looked after Palmyra's UNESCO World Heritage ruins for four decades.

Abdulkarim said last week Islamic State had beheaded Asaad and hung his body from one of Palmyra's Roman-era columns. Before the capture of Palmyra by Islamic State, Syrian officials said they moved hundreds of ancient statues to safe locations out of concern the militants would destroy them.

Islamic State, which holds parts of Syria and Iraq, seized the desert city of Palmyra in May from government forces but had initially left its ancient sites undamaged.

In June it blew up two shrines that were not part of its Roman-era structures but which it regarded as sacrilegious. It had also used Palmyra's Roman amphitheatre as a place for killing people it accused of being government supporters, according to a Syria monitoring group.

The Baal Shamin temple was built nearly 2,000 years ago and its inner area was severely damaged by the explosion, which also caused surrounding columns to collapse, according to UNESCO.

"The art and architecture of Palmyra, standing at the crossroads of several civilizations, is a symbol of the complexity and wealth of the Syrian identity and history," Bokova said.

"Extremists seek to destroy this diversity and richness, and I call on the international community to stand united

against this persistent cultural cleansing."

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Islamic State of Iraq and the Levant

Group With No Jihadi Experience Rehabs ISIS Recruit
The Daily Beast
By Katie Zavadski
August 24, 2015

> **The first attempt to de-radicalize an Islamic extremist is happening in Minnesota right now, and it resembles a high school civics class.**

An American citizen who pleaded guilty to supporting ISIS was ordered by a federal judge to leave jail—and go to a halfway home instead. That rehab program is run by a group that had no prior experience with would-be Islamic terrorists, The Daily Beast has learned.

Abdullahi Yusuf of Minnesota was allowed to depart from jail and stay at a halfway home after he pleaded guilty to conspiring to provide material support to the so-called Islamic State widely known as ISIS in January. (Yusuf was stopped at the airport trying to fly to Turkey in May 2014, at age 18.) Once inside the halfway home, Yusuf was to be "de-radicalized" through regular meetings with a counselor whose curriculum looked more like a high school civics course than religious deprogramming.

His attorney proposed the de-radicalization program and Judge Michael Davis approved it over prosecutors' objections. In a memorandum, the assistant U.S. attorneys trying Yusuf's case reiterated their concerns about this program for Yusuf, because they said he had evaded his parents' supervision and lied to authorities. Nevertheless, Judge Davis released him with an electronic monitoring device around his ankle.

Yusuf was assigned a bed at a halfway house in St. Paul where he could only leave for approved activities—like meetings with his mentors from a civics group called Heartland Democracy.

Heartland director Mary McKinley said she was not exactly sure why Yusuf's proposal was granted, other than maybe it "just made sense."

"On the other hand, it was also a surprise that any kind of access was given," she said. "But I think it says a lot about what the U.S. attorney and the community were trying to do."

Heartland had no experience with de-radicalizing jihadis, and it was carrying out the government's first foray into deradicalizing ISIS sympathizers. While government-sanctioned de-radicalization programs for jihadis have existed for years in Canada, Europe, and even Saudi Arabia, the U.S. never faced large numbers of homegrown jihadists until the rise of ISIS. (More than 60 people have been arrested for, charged with, or convicted of ISIS-related crimes so far.)

The U.S. has been trying for years to "counter violent extremism" by fighting the message of terrorists instead of just the terrorists themselves. The State Department launched a Twitter account to push back against ISIS propaganda; the White House proposed better community policing and workshops with the "creative arts community."

McKinley in court documents proposed adapting Heartland's existing civics program for gangs to Yusuf.

McKinley said one of the first objectives is to "coach our youth in deep and sustained civic empowerment and 'real' civics made accessible, experiential, and multi-dimensional through the Empowering U curriculum and coaching method," which is the program Heartland Democracy previously used.

In other words: civics for jihadis.

"This is the first time actually, as far as we can tell, that somebody has had the opportunity to be part of something like this," McKinley told The Daily Beast, though she added that she was reluctant to call what her program does "de-radicalization."

"I don't call it that because that's not what my background is in," she said. "I guess people could label it as such."

"I don't know if he's met with any religious leaders. I mean, he's an adult, he can get any visitor he wants." The judge approved Yusuf's release in late January. He and a Somali-American mentor began to work through an extensive reading list, which included Richard Wright's Native Son, a novel about growing up poor and black in the 1930s, and an article by Native American author Sherman Alexie about how poetry freed him from the "reservation" of his mind.

McKinley would not say how often Yusuf met his mentor.

"We met with him regularly, I don't know the number of times a week," she said. When pressed on whether they met weekly, biweekly, or at a different pace, McKinley would not clarify. "We met with him regularly."

Court documents also reference Yusuf meeting with religious leaders, but McKinley wasn't sure about that.

"I don't know if he's met with any religious leaders," she said in response to a question about meeting with imams. "I mean, he's an adult, he can get any visitor he wants."

In April, the halfway house's inspection of Yusuf's room turned up a box cutter, which got him kicked out of the home—but not out of rehab.

"He has been continuing with his reading and his writing and his studying in the jail, and now we've gotten approval for his mentors to go into the jail to meet with him one on one," Yusuf's lawyer, Jean Brandl, told The Daily Beast.

The proposal for Yusuf did not say how anyone would determine whether he's been de-radicalized.

"There hasn't been enough time yet to determine success, other than that he continues on the path that he's on," McKinley said. "My goal is just to keep working with him. I'm not at a point where I would have some grand goal. It's a small part of the puzzle."

Barely a month after Yusuf was remanded to police custody, attorneys for three other young Somali-American men arrested for supporting ISIS filed proposals to have them released before trial.

Lawyers for Hamza Naj Ahmed, Hanad Mustofe Musse, and Zacharia Yusuf Abdurahman proposed that they live with their fathers and other family members. Once there, the attorneys proposed comprehensive plans in which the men would meet with religious and community members in order to integrate them into the local, peaceful Muslim community and to discuss theological issues.

Just like in Yusuf's case, the individuals involved had no experience de-radicalizing would-be jihadis. In July, Judge Davis rejected the well-meaning efforts after prosecutors argued that, among other things, the proposed plans wouldn't adequately supervise the youths or protect the community.

An assistant to Judge Davis said he "will not comment on that because it's an ongoing case."

One of the many problems with America's nascent jihadi rehab program is that the burden falls on a "a lot of ad hoc organizations that are good-hearted" but ill-equipped to handle, said Seamus Hughes, the deputy director of George Washington University's program on extremism.

Nevertheless, experts say it's time to start trying.

"I think the sheer number of ISIS-related cases is causing both law enforcement and the judiciary to make a re-evaluation of what they think is the right punishment for these kinds of crimes," Hughes said.

Prosecutors and judges may warm to the idea of rehab, but the public may be more reluctant to give a second chance to people seeking to join a group best known for beheading Americans.

"When you put a terrorism prism on it, people's anxiety level rises," said Mubin Shaikh, a former Islamic radical who now studies programs to disengage and de-radicalize other young people. Shaikh said rehab for wannabe

terrorists isn't really groundbreaking: Similar techniques have been used in gang prevention for decades.

"There's an increasing awareness that [U.S. officials] want to at least try to give some of these kids an option, at least while their cases work through the court," Shaikh said. "It's a good step for sure."

Likewise, it may give parents another way to save their children from joining ISIS.

"I think that explicitly making it part of the government's arsenal" is good, said Daveed Gartenstein-Ross, a senior fellow at the Foundation for the Defense of Democracy.

He cautioned against offering it as an alternative to incarceration, however.

"There is a huge incentive for people to claim false de-radicalization" in those cases, Gartenstein-Ross said.

Shaikh said the liars can be easy to spot.

"One of the small things that I look for is, does the person challenge you?" Shaikh said. "Because if the guy just accepts everything you say, he's a fraud."

More importantly, Shaikh said they have to disavow their old beliefs publicly, in a way that would later make it harder for them to tell other radicals that they were simply "faking it" through the deprogramming.

"You can see from other people who have de-radicalized... you can see it in their behavior and in their speech," Shaikh said. "Is this person now promoting positive narratives, or are they continuing to spin their wheels in their old narratives?"

Both Shaikh and the U.S. government agree about what ultimately makes rehab work: The person must want to change. It's not at all clear that these would-be ISIS recruits are looking to make such a shift.

"Indeed, there is no evidence that the defendants are seeking intervention—rather, it is being foisted upon them by other well-intentioned individuals," the government wrote of the proposals for Ahmed, Musse, and Abdurahman.

Justice Department: Arizona man indicted for supporting ISIS
KTAR News
August 27, 2015

> **An Arizona man was indicted Thursday for allegedly supporting the Islamic State militant group known as ISIS.**

Ahmed Mohammed El Gammal, 42, allegedly helped a New York City college student travel to Syria via Turkey to receive military-style training from ISIS. The indictment said Gammal and the unidentified student communicated for months before Gammal flew to Manhattan to meet the student.

Gammal allegedly gave the student social media contact information for a person who lives in Turkey and remained in contact with the pair as the student made his way to Syria. The student received ISIS military training for at least three months.

Gammal, a resident of Avondale, was arrested Monday.

"Individuals like Gammal who allegedly serve as facilitators for ISIL fuel the hatred and radicalization that keep terrorist organizations like ISIL alive," U.S. Attorney Preet Bharara said in a release.

Gammal was charged with one count each of providing material support to a designated foreign terrorist organization and one count of conspiring to provide material support to a designated foreign terrorist organization, receiving military-type training from a designated foreign terrorist organization and conspiring to receive military-type training from a designated foreign terrorist organization.

Some of the charges carry a maximum sentence of 20 years in prison while others carry a mandatory sentence of 10 years.

Kenyan radical Muslim conspired to give terrorist groups material support.
The Examiner
By Jim Kouri

August 29, 2015

Kenyan police have released a report naming three men believed to be recruiters for Islamic terrorist group al-Shabab.The report, titled "Tracing the Disappearing Kenyan Youth," indicates the men previously operated in Kenya.

A Kenyan national who advocated violent jihad was sentenced to 15 years in federal prison on Friday by a judge in Miami, Florida, for funneling $11,600.00 to Islamic terrorist organizations operating in countries located in northern Africa and the Middle East. The Islamist defendant entered a guilty plea in Florida since some of the money was transferred in Miami.

The defendant, 27-year-old Mohamed Hussain Said, a citizen and resident of Nairobi, Kenya, was sentenced to prison by U.S. District Judge Ursula Ungaro of the Southern District of Florida for his participation in a conspiracy to give material support to three groups that are designated Foreign Terrorist Organizations by the U.S. State Department: the so-called "core" al-Qaida, al-Qaida in Iraq/al-Nusrah Front (AQI/al-Nusrah Front) and the Somalia-based Al Shabaab, all of them Sunni Muslim organizations.

On May 28, 2015, Said pleaded guilty to count one of an indictment charging him with conspiracy to provide money and recruits to the three aforementioned groups. Said's role in the terrorism conspiracy was the receipt of a series of wire transfers from co-conspirator Gufran Ahmed Mohammed to be transferred to Al Shabaab, which frequently crosses the border of Somalia into Kenya to launch attacks. Al Shabaab has also successfully recruited Kenyan Muslims -- a religious minority that includes family members of President Barack Obama.

Said was also involved in the recruitment of experienced Al Shabaab fighters for AQI/al-Nusrah Front to fight in the Syrian rebellion that has been taken over by radical jihadists. Additionally, Said attempted to recruit jihadists for terrorist operations and attacks within the United States homeland.

Meanwhile, also on Friday, in Manassas, Virginia, 17-year-old Ali Shukri Amin was sentenced to 11-years in prison to be followed by a lifetime of supervised release and monitoring of his internet activities for conspiring to provide material support and resources to the Islamic State in Iraq and Syria (ISIS), arguably the most powerful, active and bloodthirsty terrorist group currently active in the international jihad.

"Ali Shukri Amin is a young American who used social media to provide material support to ISIL," said Assistant Attorney General John Carlin. "ISIS continues to use social media to send their violent and hateful message around the world in an attempt to radicalize, recruit and incite youth and others to support their cause. More and more, their propaganda is seeping into our communities and reaching those who are most vulnerable. The Department of Justice will continue to use all tools to disrupt the threats that ISIS poses, and our efforts will be furthered by parents and other members of our community willing to take action to confront and deter this threat wherever it may surface," Carlin noted.

"Today's sentencing demonstrates that those who use social media as a tool to provide support and resources to ISIS will be identified and prosecuted with no less vigilance than those who travel to take up arms with ISIS," said U.S. Attorney Dana Boente. "The Department of Justice will continue to pursue those that travel to fight against the United States and our allies, as well as those individuals that recruit others on behalf of ISIL in the homeland."

Two Americans Headed to Prison After Tweeting Support for ISIS: As Reason regulars are all too aware, the feds have been taking a heavier hand lately when it comes to online speech.
The Reason
By Elizabeth Nolan Brown
August 31, 2015

In various European countries, making racially or religiously insensitive statements can get you thrown in prison for "hate speech." In America, thanks to the First Amendment, citizens can avoid being prosecuted for such thought crimes...right? Well, theoretically, yes. But the recent sentencing of two online ISIS supporters tells a different story.

The first case involves a suburban Virginia high-school student, Ali Shukri Amin, who ran an ISIS-sympathizing Twitter account. Amin, 17, was sentenced as an adult Friday to 11 years in federal prison. The teen confessed earlier this summer to running the pro-ISIS Twitter account @Amreekiwitness (now taken down), which offered

instruction on how to send Bitcoin to support ISIS, and to helping arrange for another teenage ISIS supporter to travel to Turkey to meet up with members of the Islamic State. Amin was charged with conspiring to provide material support to terrorists, both for assisting his friend and for the Bitcoin instructions.

The second case involves Frederick Remon Robinson, a 46-year-old Houston man who posted ISIS-positive things to Twitter. Robinson was arrested in April 2015 after making statements such as: "If white people hate ISIS so much, then I like ISIS. The enemy of my enemy is my friend. #chopthemheadsoff" and "I say, don't hesitate - start shooting in their cars...find them at home and fire bomb it." Robinson was sentenced to 2.5 years in federal prison plus three years supervised release.

In Robinson's case, the charges don't directly concern his tweets.* Robinson, who was previously convicted of possession of a controlled substance, was charged with owning a firearm while a felon. In this way, the feds were able to sidestep any potential free-speech concerns.

As Ken White has patiently explained many times at Popehat, there are exceptions to First Amendment-protected speech, such as "true threats." But this doesn't mean any threat is unprotected. "Some threats are too rhetorical, too conditional, too hyperbolic, and too far from serious to fall outside the zone of free speech protection," notes White.

Thus, tweeting that you're going to box Taylor Swift's ears or run the Breitbart staff through a wood-chipper or defecate in Prince Harry's mouth, while technically threats, probably do not rise to the level of unprotected true threats absent evidence of genuine intent and/or possibility of carrying said actions out. It must be clear that a reasonable person would take the statement to be genuinely threatening, that the speaker intended it as a true threat, or both.

There's no evidence that Amid is being faulted for making threats; his account merely provided information, albeit information—such as how to send Bitcoin—the Department of Justice (DOJ) was able to portray as "providing material support" to terrorists. But even Robinson's statements such as "#chopthemheadsoff" and "find them at home and fire bomb it," while they may be despicable, likely wouldn't hold up to a true theat standard. Find whom? And to whom is Robinson even speaking? This is angry bloviating, not someone legitimately suggesting he's going to go bomb someone or chop a person's head off.

Still, the federal government has been taking a heavy hand lately when it comes to online speech (as Reason regulars are all too aware). Pro-ISIS tweeting alone might not be sufficient for the DOJ to pounce, but where there's a will... "The Department of Justice will continue to use all tools to disrupt the threats that (ISIS) poses," said John Carlin, the Justice Department's assistant attorney general for national security, in a statement about Amin's case.

Amin's attorney, Joseph Flood, said the teen's support for ISIS came out of anger at the current Syrian regime and America's role in propping it up, and Amin's actions "are a reflection of his deeply held religious beliefs, but also his immaturity, social isolation and frustration at the ineffectiveness of nonviolent means for opposing a criminal regime." The feds were tipped off to Amin's "suspicious behavior" by staff at his high-school, whose observations were "quickly relayed" to law enforcement.

A reddit commenter claiming to be a classmate said that in the weeks leading up to Amin's arrest, the school was filled with "extra 'teachers' and 'administrators' that... were undercover FBI agents," though this hasn't been verified.

* Updated for clarity; while Amin's charges weren't directly speech related, they did relate to things he tweeted as well as his assistance of his friend.

Mississippi State University's Former Students Indicted For Trying To Join ISIS In Syria
International Business Times
By Aditya Tejas
September 2, 2015

> **A Mississippi couple has been indicted for trying to fly to Turkey to enter Syria to fight with the Islamic State group.**

A federal grand jury on Tuesday indicted two former Mississippi students accused of trying to join the Islamic State group. Jaelyn Young of Vicksburg and Muhammed Oda Dakhlala of Starkville, both former students of Mississippi State University, were charged with conspiracy and attempt to provide support to a foreign terrorist

organization, MSNewsNow reported.

Young and Dakhlala are both U.S. citizens. Dakhlala graduated in May with a bachelor's degree in psychology, and Young was enrolled as a sophomore chemistry student.

The pair was charged after undercover federal agents interacted with Young online, beginning in May, about her desire to go to Syria to join ISIS. She reportedly revealed that the only thing keeping her in the U.S. was a lack of funding. "I just want to be there," she reportedly said in her conversations with federal agents, according to the Associated Press.

She had also reportedly planned a nikkah, or Islamic marriage, to Dakhlala that would allow her to travel without a chaperone under Islamic law.

In June, a second FBI agent posing as an ISIS recruiter online contacted Young. According to the charges against the two, Young asked the agent's help for crossing over from Turkey into Syria. "We don't know Turkey at all very well (I haven't even traveled outside U.S. before.)," she reportedly said in her communications with the FBI agent.

Young said that both of them would like to be medics treating wounded ISIS soldiers and specified her skills at math and chemistry. She told the second agent that Dakhlala could help with ISIS' online footprint, and that he "really wants to correct the falsehoods heard here" and the "U.S. media is all lies."

Dakhlala reportedly paid $340 to expedite passport processing at the start of July. The pair was arrested last month at Golden Triangle Regional Airport near Columbus, Mississippi.

While their communications with the FBI reportedly said that they planned to fly to Greece and then take a bus to Turkey, the two later bought Delta Air Lines tickets to reach Istanbul through Atlanta and Amsterdam.

The couple's trial is set for Oct. 26.

February trial date set for Minnesota ISIS terror suspects
Minnesota Public Radio
By Mukhtar Ibrahim and Laura Yuen
September 2, 2015

A federal judge on Wednesday set Feb. 16 as the trial date in the cases of seven Minnesota men accused of conspiring to join the ISIS terror group.

The suspects were in court Wednesday morning as Judge Michael Davis weighed next steps in the high-profile cases.

Davis denied most of the pretrial motions before him, and lawyers for the defendants withdrew some of the motions they'd filed, including requests for disclosure of polygraph examinations.

The defendants' lawyers have said they should be given the name of a confidential informant and be allowed to interview him in preparation for the trial.

Prosecutors said they won't make the informant's name public at this time out of safety concerns for him and his family, but will disclose him as a trial witness.

All the defendants — Hanad Musse, Mohamed Farah, Hamza Ahmed, Zacharia Abdurahman, Adnan Farah, Guled Omar and Abdirahman Daud — were in the courtroom and sat next to their lawyers. They smiled at their families and fixed their eyes on FBI agents who came to testify against them.

Five young men accused of trying to join the ISIS terror group are, left to right: Adnan Farah, Zacharia Abdurahman, Hanad Musse, Guled Omar, Hamza Ahmed. Davis said he'll review each case separately as he continues to explore supervised released plans for the men.

"There's meetings going on all the time that you don't know about," Davis told defense attorneys, referring to the court considering options under special supervised release.

Some lawyers reiterated that they want their clients to be released to a halfway house, but the judge said there's no plan in place at the moment and ruled that the suspects will remain in jail while they await trial.

The court heard from FBI agents who described intercepting several of the suspects after they rode a Greyhound bus from Minnesota to New York City, hoping to board an international flight on their way to Syria, allegedly to join ISIS.

FBI agent Michael Lewis flew in from New York to testify about his interview with Musse and Mohamed Farah on Nov. 8 last year as the two men, along with Ahmed and Abdurahman, allegedly attempted to travel from John F. Kennedy International Airport in New York City.

Musse and Farah had trouble checking in for their flights because they're placed on a no-fly list, Lewis said. He met the men separately at the JFK terminal after he received an email from the FBI's Minneapolis division.

He said he told them that he could resolve their issue if they told him what their plans were. As the interview went on, Muse and Farah felt "irritated" and were "annoyed at not being able to travel," Lewis said.

FBI agents observed the men after they left the airport and arrived at the New York's Port Authority Bus Terminal on their way to Minneapolis.

When the men returned home, FBI special agent Harry Samit and a group of other agents were waiting for them. Three agents, including Samit, interviewed Ahmed for more than 30 minutes at an employee break room and secretly recorded his conversation at the Greyhound station in Minneapolis.

After the hearing, Somali community leaders said they were disappointed the judge didn't agree to any of the proposed plans for supervised release, which would involve community service and religious counseling.

"We're very disappointed because we thought the plan we submitted was a very comprehensive plan," said Sadik Warfa, deputy director of Global Somali Diaspora. "The community backed up the plan. We showed [the defendants are] not a flight risk and not a danger to the safety of the community."

Trial Set for Couple Accused of Trying to Join Islamic State
The New York Times
By The Associated Press
September 2, 2015

> **A young Mississippi couple accused of attempting to join the Islamic State are scheduled for trial Oct. 26 after a grand jury indicted them on charges that they tried to aid the terrorist organization.**

U.S. Magistrate Judge S. Allan Alexander set the trial date Tuesday following the Aug. 26 indictment of 20-year-old Jaelyn Delshaun Young and 22-year-old Muhammad "Mo" Dakhlalla.

Each is charged with one count of conspiracy to provide material support to a designated foreign terrorist organization, as well as one count of attempting to provide material support, facing up to 20 years in prison, as well as lifetime probation.

Court records show both waived a court appearance on the indictment and pleaded not guilty.

Their lawyers did not immediately respond to emails seeking comment late Tuesday. In a letter filed Tuesday mainly requesting copies of evidence, Dakhlalla's attorney Greg Park also requested the "opportunity to possibly engage in plea negotiations at the appropriate time."

The pair were arrested at a Mississippi airport Aug. 8 just before boarding a flight with tickets bound for Istanbul. Authorities said the two began seeking online help in traveling to Syria as early as May, not realizing they were actually chatting with undercover federal agents.

Young and Dakhlalla had undergone a nikkah, or Islamic marriage ceremony, and planned to pose as honeymooners on their trip, authorities say.

Dakhlalla is a 2011 psychology graduate of Mississippi State University who grew up in Starkville, a son of a prominent figure in the college town's Muslim community and a caterer. Young was a sophomore chemistry major from Vicksburg, the daughter of school administrator and a police officer who has served in the Navy reserve.

Despite those connections, federal authorities say Young expressed happiness online after Muhammad Youssef

Abdulazeez killed four Marines and a sailor at a Chattanooga, Tennessee, military recruiting facility in July.

An FBI agent alleges that Young had volunteered to be a medic for the Islamic State, while Dakhlalla had volunteered to produce Internet media for the group or even to serve as a fighter.

Authorities say that both confessed their plans to FBI agents after their arrest at Golden Triangle Regional Airport near Columbus and that both left behind letters to their families admitting what they were doing.

The two are being held without bail in the Lafayette County jail. Federal prosecutors argued against their release, and Alexander sided with them. The judge said that even under tight supervision at home, she feared the two would seek to commit terrorist acts.

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Special Tribunal for Lebanon

Official Website of the Special Tribunal for Lebanon
In Focus: Special Tribunal for Lebanon (UN)

Telecoms Expert Explains Cellphone Evidence to STL
The Daily Star
By Ned Whalley
August 22, 2015

> **The Special Tribunal for Lebanon heard further testimony from a prosecution expert witness Friday, before adjourning until Monday when the defense will begin its cross-examination.**

John Edward Philips, an expert in cell-site analysis, spent the session explaining the methodology used to link cellphones to each other and to their users. His testimony highlighted the extreme complexity of the process, but also the sophisticated analysis that can be brought to bear to establish such connections.

Using dozens of slides, Philips briefed the court on the capabilities – and limits – of cell-site analysis, recounting numerous examples from other criminal cases on how it can be used to link people to events they have taken great pains to distance themselves from. His testimony touched on phones whose ownership was attributed by the prosecution to Hezbollah members Salim Ayyash and Mustafa Badreddine, defendants in the case, but largely served to lay the theoretical groundwork on which it will presumably seek to build later in the trial.

The STL has relied on telecoms data to indict five Hezbollah members in the Feb. 14, 2005, assassination of former premier Rafik Hariri.

Early in the proceedings, the prosecutor asserted that "there's no great magic" in the data and call log analysis, but Philips' testimony was sufficiently complex to draw a number of clarifying questions and requests for repetition from the judges.

He spent significant time explaining how phones can be linked to individuals by their usage patterns, using the information gleaned from call logs.

"A single call might not show anything – patterns are far more useful," Philips said. He also discussed at length how one can identify a person using multiple phones for different purposes.

The prosecution alleges that three different sets of "mission phones" were used specifically to plan and execute the assassination of Hariri. Philips suggested with a series of Venn diagrams that one set of phones was clearly connected to the crime, while two other groups of "mission phones" could be linked to that set. One of those groups could then be connected to personal cellphones, information about which could be linked to the users themselves.

Philips noted that while he was familiar with the use of "mission phones," the practice was exceedingly rare, and his experience was necessarily limited.

He testified that the level of complexity alleged to have been undertaken in the plot was unlike anything he had witnessed before. "I've never seen anything this involved ... or quite so sophisticated."

Defense Questions Reliability of Cell Phone Evidence
The Daily Star
By Ned Whalley
August 25, 2015

> **The Special Tribunal for Lebanon resumed Monday with the cross-examination of a prosecution witness, as the defense questioned the substance and relevancy of evidence provided by telecommunications expert John Edward Philips. Philips testified that he had received discrete records and limited technical data from the office of the prosecutor on which he had been asked to report, and that it was not until later he learned of the nature of the case. He emphasized that his testimony, and expertise, were on cell-siting and GSM networks, not Beirut.**

This last point was the thrust of the defense's challenge to his testimony, as it repeatedly drew attention to his lack of knowledge about the country, and specifically about the Alfa network as it existed in 2005.

It sought to point out problematic assumptions in his work, and to suggest that the coverage maps and cell data from which Philips had made his reports were unreliable. Philips maintained that although he was unfamiliar of the particular models and software Alfa used at the time, certain assumptions about their nature and efficacy could be inferred as they would be "fundamental to the success of the network."

"If they wanted someone with experience of Beirut, they wouldn't have asked me," he said. "I was asked to a do a generic presentation on the operation of GSM."

The defense seized on his limited knowledge of the city, which Philips said he had not visited since the 1970s, as well as his admission that, when relevant, he usually conducts a field survey of the area in question. He seemed to suggest that doing so would be of no benefit in the current case, due to the decade that had elapsed since the assassination.

The defense questioned him repeatedly on the numerous factors that affect cell coverage and the ability to site phones, with particular emphasis on topography and interference from buildings. They also spent significant time questioning him on the accuracy of network coverage maps. If no coverage is available, Philips testified, a phone will attempt to latch onto a neighboring signal, which reduces the precision by which its location can be estimated.

The purpose of the technical questioning – which at times appeared to irritate Philips as he was forced to repeat evidence – became clearer when the defense presented him with a paragraph of testimony from an unnamed Alfa employee. It indicated that although the company had provided a JPEG image file of a coverage map from Feb. 2005, it was unable to provide a digital site database from that year. Instead, one had been simulated using data from 2007, subtracting the cells that had been added in the interim.

Philips said he was aware of the database's origin, and testified that it was a reasonable way to construct working data for 2005, when coverage differed very little. But the defense then pointed to the intervening 2006 July war, and the Israeli airstrikes that dramatically altered the Beirut skyline, particularly in the southern suburbs. Cross-examination of Philips is expected to conclude Tuesday.

STL Defense Pokes Holes in Telecoms Expert's Testimony
The Daily Star
By Ned Whalley
August 26, 2015

> **The Special Tribunal for Lebanon proceeded with the cross-examination of telecommunications expert John Edward Philips Tuesday as the defense worked to cast doubt on the reliability of the data on which his testimony is based.**

The focus for much of the session was on the limits of Philips' knowledge of the Alfa cellular network as it was in 2005. In Monday's session, the defense presented testimony from an Alfa employee stating that the network had provided a JPEG image file of a coverage map from February 2005, but could not provide a contemporary digital site database. It had instead provided a simulated one using data from 2007, removing sites added in the interim period.

A significant portion of Philip's evidence is regarding the identification of individuals through their cell data. The ability to accurately locate users through their phones is an important premise of the prosecutions' case.

The defense pointed to a number of discrepancies between the 2005 map and a reconstituted coverage plot. "You're looking at exceptions, they're quite obvious," Philips replied. But he was adamant that the differences were inconsequential to the evidence provided in his report. "As far as I can see it has no relevance to the work I've undertaken."

The defense also pushed Philips on whether he could vouch for the provenance of the 2005 map.

"I have been provided with this document and [they] said it was dated 2005," he said.

Judge David Re quickly stepped in. "The answer must be no. You're only relying on the information you've been given. You can't be certain one way or another."

Relying on telecoms data, the STL has indicted five Hezbollah members in the Feb. 14, 2005, assassination of former Prime Minister Rafik Hariri.

The defense counsel also questioned Philips on the fragmentation of cellular coverage. Small, isolated pockets of reception often appear on the extreme periphery of coverage areas, and the defense illustrated the effect with maps of Beirut and the hills above Jounieh. Philips testified that the phenomenon was common in rural and hilly areas, both in predictive models and on the ground.

But cellular coverage can be affected by a number of factors, including wind, weather and the appropriate installation of cell masts, and the defense pressed Philips on the extent to which these would affect fragmentary coverage, the accuracy of models predicting it, and the resultant level of certainty that could be assumed in siting phones.

In what has been a theme during this testimony, Philips maintained that the levels of variation being proposed by the defense were inconsistent with the performance of a mature commercial network.

"This is how the networks earn their money. This is how they provide service. This is the interface with the user ... it has to provide a consistent signal."

But the defense counsel continued to press him on his specific familiarity with Alfa's historical infrastructure. "You've looked at the maintenance records?" Philips was asked.

Dispute at the STL over Telecoms Expert
The Daily Star
By Ned Whalley
August 27, 2015

> **Testimony before the Special Tribunal for Lebanon was interrupted Wednesday by a dispute over the disclosure of documents related to the prosecution's recruitment of telecommunications expert John Edward Philips. Philips was being questioned on the potential manipulation of cell phone evidence by defense counsel David Young, who represents the interests of defendant Assad Hassan Sabra, one of five defendants being tried in absentia for the assassination of former Prime Minister Rafik Hariri on Feb. 14, 2005.**

The disagreement arose over a document that contained Philips' reply to a letter from the office of the prosecutor regarding a quote for his services. Philips referred to the document when asked about ways in which call data might be manipulated, mentioning that there had been allegations in certain quarters that the data had been planted or otherwise falsified.

Asked the source of such allegations, Philips produced the correspondence, which contained a series of questions on areas where he might provide evidence and his detailed replies.

"I have not seen this document," Young said, referring to the episode as a "serious disclosure failure."

In the correspondence, Philips had touched on the limits of the usefulness of certain types of cell maps, as well as methods by which call data can be manipulated.

The prosecution maintained that there was nothing substantive in the letter that had not been disclosed elsewhere, and was adamant that it had no knowledge or belief that any of the call logs had been manipulated or fabricated. It stated that the question had only been broached to Philips as it believed the defense would attempt to cast such aspersions at trial.

But Young remained unsatisfied. "I am duty bound to make an application to defer any cross examination ... It would be inappropriate to continue when investigations need to be made."

His application was supported by other defense counselors and ultimately granted by the judges. Up to that point, the preponderance of Young's questions had been the ability to reliably and precisely locate a phone, with emphasis on the behavior of cell systems and anomalies in cell coverage.

Cell phones are programmed to monitor and switch onto a nearby signal should the one providing coverage weaken or go out of service. Scheduled maintenance, high call volume, and other network failures can prompt a phone to switch. It is this signal which is then reflected in call logs, reducing the accuracy with which the phone can be accurately placed. The cause and frequency of such failures was the subject of much of Philips' testimony, but he emphasized that in his experience they were exceedingly rare.

Young placed great emphasis on the possibility of coverage failing due to high call volume, particularly in dense urban environments, alleging that the massive explosion that killed former Prime Minister Rafik Hariri and a score of other people would have been just the type of event to overload networks in this way. He pointed to witnesses that had specifically testified that they had problems using their phones after the incident, which occurred around 1 p.m.

Philips conceded it was likely that this is precisely what had happened, but not until after the fact.

"The havoc wouldn't have occurred until after the incident – unless people expected it."

With cross examination halted, the prosecutor was instructed to re-examine Philips. As it revisited defense exhibits, Philips emphasized that although a phone could switch on up to six other signals, it did so based on their strength. This meant even during a local failure, a phone was highly likely to switch on to the next nearest cell site. The defense had emphasized on the number and geographic range of nearby signals in their presentation.

This portion of Philips' testimony concluded with the end of the session, and the tribunal adjourned until Thursday morning, when it will hear further evidence from the prosecution.

Title
Distributor of Implicated SIM Cards Begins STL Testimony
By Alexis Lai
September 1, 2015

> **The Special Tribunal for Lebanon began hearing testimony Monday from Lebanese telecommunications distributor Power Group, which sold to Tripoli retailers SIM cards for phone numbers implicated in the red and green networks, including that of the alleged suicide bomber in the 2005 assassination of former Prime Minister Rafik Hariri. Established 1994 in Beirut, Power Group distributes SIM cards, recharge cards and handsets. Testifying via a video link from Beirut, owner Saadeddine El-Ajouz was asked by the prosecution to explain the sales and registration procedures throughout Lebanon's mobile phone card supply chain, from the end user to network provider Alfa (previously branded as Cellis until late 2004).**

In a laborious questioning that tested the patience of trial chamber President David Re, the prosecution then took Ajouz through several sets of undisputed business records Power Group had provided.

The invoices, delivery notes and other documents related to prepaid and postpaid mobile phone numbers allegedly used by two defendants – Mustafa Badreddine and Hassan Merhi – and the red and green phone networks.

During the key years of 2004 and 2005, Power Group operated a branch in Tripoli that distributed SIM cards to retailers in the city.

While its records detailed prices, quantities and serial numbers of the Cellis/Alfa prepaid SIM cards it bought and distributed, they did not include the corresponding phone numbers, which Ajouz said were unknown to distributors.

A December 2004 delivery note listed the serial numbers of eight SIM cards linked to red network numbers. November 2003 records showed the sale of a prepaid SIM card for a phone number used to contact the yellow number used by defendant Salim Ayyash over 2004-05. Other documents showed that in April 2006, Power Group sold a SIM card for the personal number subsequently used by Badreddine for two months.

Ajouz testified it was difficult for distributors to verify the IDs submitted with subscribers' prepaid applications forms. He said it was common for customers not to show their ID cards, and shops often submitted false copies to receive the $2 Alfa offered as an incentive for each complete application form.

The prosecution also presented business records showing that of the 18 postpaid phone numbers allegedly used by the green network, 12 had been distributed by Power Group. One was allegedly used by Merhi solely for contacting Badreddine from September 2004 to the day of Hariri's assassination.

In the remaining half hour, Guenael Mettraux, a lawyer for defendant Assad Sabra, began interrogating Ajouz, saying at the outset that he wanted to know more about his associates to understand how Power Group's products came to be implicated in the assassination.

Mettraux immediately raised the topic of Al-Ahbash (Association of Islamic Charitable Projects.) While Ajouz confirmed his membership in 2004 and 2005 and his present involvement, he denied having an official PR role. He claimed to be a volunteer who participated in some delegations to visit ministers.

Mettraux went on to grill him about fellow member Ahmad Abdelal, whom he alleged was the "go-to man for the Lebanese and Syrian security apparatus." Ajouz, who said he did not have a close relationship with him, repeatedly denied knowledge of Abdelal's alleged military intelligence links.

He dismissed an October 2007 General Security report that Mettraux provided to support his claim, saying "tens" of any kind of report could be found.

He argued that all organizations needed security connections to carry out activities as harmless as festivals, telling the Swiss lawyer that he needed to better understand Lebanon. On that note, Re adjourned the trial, smiling as he told Mettraux that Ajouz was "throwing a challenge to you overnight."

STL Prosecution: Ajouz not a Candid Witness
The Daily Star
September 2, 2015

> **The Special Tribunal for Lebanon heard for the second day Tuesday the testimony of the owner of the telecommunications distributor associated with several cell networks that allegedly carried out the Feb. 14, 2005. attack that killed former Prime Minister Rafik Hariri. Lebanese telecommunication distributor the Power Group sold to Tripoli retailers SIM cards for phones implicated in the red and green networks, including that of alleged suicide bomber in the 2005 assassination of Hariri.**

Established in 1994 in Beirut, The Power Group distributes SIM cards, recharge cards and handsets. Testifying for a second day, owner Saadeddine Ajouz was asked by Guenael Mettraux, a lawyer for defendant Assad Sabra, to clarify his relationship with Sheikh Ahmad Abdel-Aal, whom he believes was the go-to man for Syrian and Lebanese security services in the period of the assassination. Abdel-Aal is a prominent figure in the Association of Islamic Charitable Projects.

But Ajouz appeared hesitant to answer Mettraux's questions, telling the lawyer they were "sensitive," implying

that answering them might compromise his safety. Mettraux said as a witness, Ajouz was "less than candid."

"Extremists are everywhere," Ajouz said when asked to provide information about Abdel-Aal, "I believe this exposes the person who gave this to danger. He needs protection because there are names mentioned here and extremists are able to reach anyone who harms them."

At one point, when confronting Ajouz with phone records proving he was in regular contact with Abdel-Aal from December 2004 to February 2005, contradicting testimony he had given the day before that he met the man "by coincidence if I saw him on the street," the witness said the numbers had been put together "haphazardly."

To explain the nearly 37 calls between himself and Abdel-Aal from Dec. 8, 2004, to Feb. 23, 2005, he said they were related to greetings exchanged during special occasions. When asked on what occasion Abdel-Aal had called him on Jan. 4, 2005, Ajouz attributed it to New Year's.

At another point the much-exasperated Ajouz exclaimed, "I have nothing to do with these questions, I don't know any one of these people."

The day before, the prosecution presented records showing that of the 18 postpaid phone numbers allegedly used by the green network, 12 had been distributed by The Power Group. One was allegedly used solely by defendant Hassan Merhi to contact Mustafa Badreddine, from September 2004 to the day of Hariri's assassination.

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Bangladesh International Crimes Tribunal

Satkhira Jamaat Chief Abdul Khaleque Mandal Shown Arrested in War Crimes Case
BDNews24
August 22, 2015

> **International Crimes Tribunal (ICT) Assistant Director Abdur Razzak told bdnews24.com on Friday a petition was filed at the tribunal on Thursday to show him arrested in the case.**

The tribunal accepted the petition and sent an order to the Satkhira Jail authorities in the afternoon.

Satkhira Jail Jailer Abu Taleb said they received the order through the deputy commissioner's office on Thursday evening.

Mandal, a Jamaat policymaker, was arrested on June 16 at a madrasa at Sadar Upazila on charges of secretly meeting people to orchestrate violence.

On July 2, 2009, Nazrul Islam Gazi from Shimulbarhia village filed a case against him for killing his father Rustam Ali and four others during the war against Pakistan.

The ICT is hearing the case now.

Bangladesh Will Review Islamic Leader's Sentence
Shanghai Daily
August 23, 2015

> **About a year after Bangladesh's Supreme Court commuted the death sentence of the second-most important Islamic party leader convicted of war crimes to life imprisonment, the Bangladesh government Sunday said it will move a review with the apex court.**

A five-member bench of Appellate Division of Bangladesh's Supreme Court on Sept. 17 last year commuted the

death sentence of Bangladesh Jamaat-e-Islmai party's vice president Delwar Hossain Sayeed for war crimes including mass killings during the country's war 43 years ago.

Attorney General Mahbubey Alam told media, "We'll file a review plea with the Supreme Court seeking his death penalty after obtaining the full verdict."

War Crimes Tribunal Calls Zafrullah 'wrong-headed' Issues Stern Warning for Remarks on Judges
BDNews24
September 1, 2015

> **The ICT-2 led by Justice Obaidul Hassan issued the warning on Tuesday while delivering its decision over contempt charges brought against him.**

On Jun 10, the war crimes tribunal found Chowdhury guilty of contempt for his remarks about the punishment given to British national and journalist David Bergman.

Later in the day, he met the press and said: "The contempt of court verdict has proved the mental illness of the three judges."

The Appellate Division quashed his conviction on contempt charges over remarks about Bergman's punishment but cautioned him after he offered unconditional apology.

The contempt charges over remarks on judges were brought by freedom fighters Monoranjan Ghoshal, Ali Asgar, Nazrul Islam and Kamal Pasha Chowdhury and one FM Shahin, in a plea filed with the International Crimes Tribunal.

After the ICT verdict on Jun 10, Zafrullah refused to stand on the dock before getting a copy of the verdict. Later he did so after getting a copy of the verdict.

Speaking to media after emerging from the courtroom, he had said then the verdict was a proof that the judges were 'mentally unstable'.

"There cannot be justice where judges cannot tolerate criticism."

On Jul 12, the tribunal heard the contempt charges over the comments and ordered Chowdhury to appear before the court to explain his stand.

On Aug 9, Chowdhury rendered an 'unconditional apology for his remarks.

On Tuesday, the tribunal said that it accepted the apology and slated Zafrullah's comments 'made by a wrong-headed person'.

The court strictly cautioned Chowdhury and said "not to practice to make such comments in the name of freedom of speech".

During the whole time in the court on Tuesday, the Gonoshasthaya Kendra founder stood silently on the dock.

He did not even speak to the media waiting outside the court after the verdict.

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War Crimes Investigation in Burma

MPs Back Signing of Optional Protocol on Child Soldier
Myanmar Times
By Ei Ei Toe Lwin

August 27, 2015

The Pyidaungsu Hluttaw has approved an optional international protocal which aims to keep children out of armed conflict.

The Ministry of Foreign Affairs submitted a proposal to proceed with the ratification of the United Nations protocol to parliament on August 20. It was approved without objection yesterday.

The optional protocol – an addition to the Convention on the Rights of the Child – requires states to "take all feasible measures" to ensure that soldiers under the age of 18 do not take a direct part in hostilities. They are also required to raise the voluntary recruitment age above 15 years, and cannot conscript anyone under 18. Parties to the optional protocol must also take measures to stop non-state armed groups from recruiting and using children under the age of 18 in conflicts.

Deputy Minister for Foreign Affairs Minister U Tin Oo Lwin said signing the convention would show that Myanmar is willing to adhere to international human rights norms.

"It's not enough to merely sign the convention – the government also needs to enact the necessary laws and penalties for those who fail to follow the convention's rules and regulations," he added.

The optional protocol would also benefit the peace process, he said, because both the government and ethnic armed forces must follow the terms.

MPs welcomed the proposal but warned the government not to sign the optional protocol "for show". They urged the implementation of the steps required for a full compliance.

U Khine Maung Yi, a Pyithu Hluttaw representative for Yangon's Ah-lone, said the convention was important for stopping the recruitment and use of child soldiers.

"The main point is that the convention does not allow Myanmar to leave the agreement if conflict continues. Myanmar has not solved its internal conflict yet, but I think we can control abuse of children rights to some extent by signing this convention," he said.

Myanmar's armed forces, the Tatmadaw, have regularly been accused of recruiting and using child soldiers.

The Tatmadaw and seven non-state armed groups in Myanmar have been listed by the UN Security Council as "persistent perpetrators" of underage recruitment.

In June 2012, the Ministry of Defence committed to ending the recruitment and use of children in the Tatmadaw by signing a Joint Action Plan with the UN, the first step toward being removed from the list. Since then it has released 646 underage recruits, according to the UN.

Daw Su Su Lwin, an MP from Thongwa in Yangon, said the signing of the optional protocol would not immediately result in Myanmar being delisted as an underage recruiter.

Myanmar's Backsliding Leads to Doubt about U.S. Diplomacy Strategy
Los Angeles Times
By Paul Richter
August 30, 2015

The State Department's second-ranking diplomat flew to Myanmar in May to urge the country's leaders not to adopt a tough "population-control" law apparently aimed at halting growth of persecuted ethnic minorities.

President Thein Sein listened politely to Deputy Secretary of State Antony Blinken. And hours after Blinken departed Yangon, he signed the bill into law.

Myanmar's leaders have repeatedly rebuffed U.S. appeals this year despite a public commitment to reform that led the White House to restore full diplomatic relations in 2012, and to drop most sanctions on the authoritarian government.

Administration officials consider the diplomatic opening to the long-isolated nation, also known as Burma, a

marquee achievement in President Obama's first term. In her presidential race, former Secretary of State Hillary Rodham Clinton is expected to portray the thaw as one of her top diplomatic accomplishments.

But three years later, progress is coming slowly in some areas and there is clear backsliding in others. Critics say the administration was hasty in chalking Myanmar, a resource-rich country wedged between India, China and Thailand, on the win list.

"The administration certainly declared victory too soon," said Phil Robertson, deputy director for Asia at Human Rights Watch.

After decades with one of the worst human rights records in the world, the military-dominated leadership in Napyidaw, the capital, eased its grip in 2011, freeing 1,300 political prisoners, allowing the opposition more seats in the parliament and permitting more free speech.

But the reforms preceded another crackdown. In recent months, Thein Sein's government has blocked lawmakers' attempts to liberalize the constitution, forced a top reformer from leadership of the ruling party and stepped up arrests of opponents and journalists. Analysts worry that the military will reassert control before scheduled parliamentary elections in November.

Critics also cite the harsh treatment of the Rohingya, a Muslim minority group of 1 million that's become a target of violent attacks by Buddhists and an ethnic cleansing campaign since the country began its transition.

Thousands of Rohingya have fled squalid camps in boats, setting off a regional migration crisis and undermining international support for Myanmar's government.

Opposition leader and Nobel laureate Aung San Suu Kyi, America's chief ally in Myanmar, has declined to condemn the government's tough treatment of the Rohingya.

Obama administration officials continue to press for reforms. Top U.S. officials regularly visit, including Obama and Clinton, who have each gone there twice.

Though "very significant challenges" remain, "the progress is real and it's significant," Blinken told reporters during his May visit.

Myanmar's circumstances have become part of the debate over Obama's assertions that the United States can do more to reform countries by opening diplomatic and commercial ties, than by isolating them, an argument it recently made when it restored diplomatic ties with Cuba after more than half a century.

In the opening to Myanmar, the administration retained some sanctions but front-loaded most of the rewards. They restored diplomatic relations, dropped most economic penalties, began direct U.S. aid, and took steps to allow U.S. companies and international financial institutions to operate there.

"It was a gutsy move," said Jonah Blank, an Asia expert at the nonpartisan Rand Corp. think tank and a former Senate Democratic staffer.

Human rights advocates contend that the administration should have kept more leverage to stop the government from backsliding on reforms.

"They've been generous with their rhetoric, but they haven't used the sticks they have to put pressure on the government," said Simon Billenness, executive director of the U.S. Campaign for Burma, a nonprofit advocacy group.

U.S. lawmakers, many of whom supported the diplomatic opening, are now beginning to call for the use of more penalties.

Rep. Ed Royce (R-Fullerton), chairman of the House Foreign Affairs Committee, and Rep. Eliot L. Engel (D-N.Y.), its ranking minority member, sent a letter to the administration Aug. 11 arguing that Myanmar's human rights abuses "demand a strong response."

They urged Treasury Secretary Jacob J. Lew to sanction individual officials. Supporters of the diplomacy say it has helped pull Myanmar away from its most important patron, China, and brought it closer to the United States and its allies. Administration officials deny that was ever a goal.

But Blank, of Rand Corp., says the policy has scored an important win by that standard. Although Myanmar's trade with the United States is still not large, its economy is expanding and it is increasingly interconnected with its region and major powers.

"This was one of the few remaining hermit kingdoms in the world," he said. "Now it's not going to be part of that club."

Myanmar's President Signs Off on Law Seen as Targeting Muslims
Yahoo News
By Hnin Yadana Zaw
August 31, 2015

> **Myanmar's president on Monday signed into law the last of four controversial bills championed by radical Buddhists but decried by rights groups as aimed at discriminating against the country's Muslim minority.**

Myanmar, which will hold its first democratic national poll in more than two decades on Nov. 8, has seen a flowering of anti-Muslim hate speech since the military gave up full power and opened up politics and the economy in 2011.

President Thein Sein signed the Monogamy Bill after it was passed by parliament on August 21, Zaw Htay, a senior official at the president's office, told Reuters. The law was briefly sent back to parliament for review before being signed.

The bill sets punishments for people who have more than one spouse or live with an unmarried partner other than the spouse.

The government denies it is aimed at Muslims, estimated to make up about 5 percent of the population, and some of whom practice polygamy.

The president also signed two other laws, which restrict religious conversion and interfaith marriage, on August 26, Zaw Htay said.

The measures are part of four "Race and Religion Protection Laws" championed by the Committee for the Protection of Nationality and Religion, or Ma Ba Tha.

The laws were dangerous for Myanmar, said an official of New York-based Human Rights Watch.

"They set out the potential for discrimination on religious grounds and pose the possibility for serious communal tension," said Phil Robertson, deputy director of the Asia division of Human Rights Watch.

"Now that these laws are on the books, the concern is how they are implemented and enforced."

In May, the president signed a Ma Ba Tha-backed population control bill that forces some women to space three years between each birth.

The monk-led group has stoked sentiment against Muslims, whom it has accused of trying to take over Myanmar and outbreed its Buddhist majority.

Hundreds of people have been killed in flare-ups of religious violence in Myanmar. In 2012, an incident in Rakhine State led to the displacement of more than 140,000 people, most of them members of the stateless Rohingya Muslim minority.

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REPORTS

UN Reports

U.N. Calls for End to Impunity for Crimes in Darfur, Sudan
Reuters
Stephanie Nebehay
August 21, 2015

Sudanese police and security forces have shot, killed and abducted civilians in Darfur with near-total impunity, the United Nations said on Friday in a report also documenting crimes committed by rebels last year in the remote western region.

The military conducted aerial bombing and ground attacks on civilians and burned villages in its campaign to end the insurgency in North and South Darfur in 2014, the U.N. human rights office said, citing serious violations of international law.

Peacekeepers from the African Union and U.N., whose joint force in Darfur is known as UNAMID, documented 411 cases of abuses by all sides in the conflict, affecting 980 people, the report said. Nearly one-third involved sexual violence.

"These included abductions, physical assault, and armed attacks against civilians, particularly IDPs (internally displaced persons), causing injury or death, sexual and other forms of gender-based violence cases, including allegations of rape, gang-rape and sexual harassment," the report said.

The true figures are believed to be higher due to fear of reprisals, social stigma, and a lack of trust in authorities to take action, it said.

Sudan's government has faced a rebellion in Darfur since 2003 and a separate but linked insurgency in Blue Nile and South Kordofan since South Sudan seceded in 2011. More than 300,000 people have been killed in the Darfur conflict, the U.N. says.

UNAMID documented the killing of 392 civilians across Darfur last year.

"Cases which involved Government security elements and affiliated militia tend to illustrate the weakness of law enforcement institutions and the degree of impunity in which violations are committed," the report said.

Sudanese armed forces are alleged to have committed mass rape of more than 200 women and girls in Tabit, North Darfur, but UNAMID investigators were repeatedly denied access by Sudanese authorities, it said.

"The authorities must bring an end to the endemic impunity in Darfur," said Zeid Ra'ad Al-Hussein, U.N. High Commissioner for Human Rights.

Zeid urged the Khartoum government and rebel movements to cooperate with both domestic investigations and those at the International Criminal Court, which began in 2005.

The Hague-based ICC has issued an arrest warrant for Sudanese President Omar Hassan al-Bashir on charges of war crimes and genocide in Darfur.

On Thursday he proposed a two-month ceasefire with rebels and set a date for a new meeting in a national reconciliation process that collapsed in January.

(Reporting by Stephanie Nebehay; Editing by Angus MacSwan)

UN Chief Ban Ki-Moon Appalled By ISIS' Demolition Of Palmyra, Calls It A 'War Crime'
Daily Times Gazette
August 25, 2015

United Nations secretary general Ban Ki-moon expressed his shock and dismay on Monday after hearing the reports of demolition of a historic 2000-year-old temple in ancient Palmyra by Islamic State militants.

According to Syria's antiquities director-general of antiquities and museums, Maamoun Abdulkarim, the Islamist

militants blew up Baalshamin temple with large quantities of explosives on Sunday. However, there are reports from the Syrian Observatory for Human Rights that the temple might have been destroyed about a month ago. The demolition of the temple only adds to the extensive list of world heritage sites the militant group has destroyed.

The UN chief also expressed his outrage over the murder of the retired chief archeologist at Palmyra, Khaled al-Assad. The ISIS militants beheaded him on August 18 and mutilated his body afterwards.

In a statement released on Monday, Ban said, " These barbaric acts of terror join a long list of crimes committed over the past four years in Syria against its civilian population and heritage."

He also urged the governments in the world to get together and "swiftly to put a stop to this terrorist activity."

Ban said that destroying such precious cultural heritage sites is nothing less than a war crime. The ancient city of Palmyra is listed in the UNESCO world heritage sites by United Nations.

Commenting on the destruction caused by ISIS, the director-general of UNESCO, Irina Bokova, in a statement said that that the demolition of the ancient temple was "a new war crime and an immense loss for the Syrian people and for humanity."

UN Security Council to 'Act Immediately' if South Sudan Peace Deal not Signed
NDTV
August 26, 2015

The UN Security Council on Tuesday piled pressure on South Sudan's president, warning it was ready to "act immediately" if he does not sign a deal to end the 20-month war ripping apart the world's youngest nation.

President Salva Kiir is scheduled to sign the power-sharing agreement in Juba on Wednesday, alongside the leaders of Kenya, Uganda, Sudan and Ethiopia, but his spokesman said he had reservations.

South Sudan's rebel leader Riek Machar signed the agreement a week ago but Kiir had only initialled the text and said he would return to the table in early September.

After meeting on the crisis in South Sudan, council members "expressed their readiness to act immediately if President Kiir does not sign the agreement tomorrow as he has undertaken," said Nigerian Ambassador Joy Ogwu, who chairs the council this month.

"We will take immediate action if he does not sign, or if he signs with reservations," she said, without elaborating.

The United States has presented a draft resolution that would impose an arms embargo and targeted sanctions on South Sudan if Kiir fails to sign the accord.

Russia and China have expressed doubts about the draft text as have some African countries, in particular over sanctions that would target those deemed as blocking the peace accord.

The United States has yet to submit a list of names of those who would be hit by an assets freeze and travel ban.

Russia, a veto-wielding member of the council, said there would be no need to adopt the resolution if Kiir signs the deal.

"We don't need this resolution if the main purpose is achieved," said Russian Deputy UN Ambassador Petr Iliichev.

A first step

The latest in a string of peace deals, the agreement commits both sides to implementing a "permanent ceasefire" within 72 hours after signing.

The deal gives rebels the post of first vice president, which means that Machar would likely return to the post he was sacked from in July 2013, six months before the war began.

To address months of horrific violence, the agreement calls for a truth and reconciliation commission to be established and a war crimes court in collaboration with the African Union.

The UN envoy to South Sudan, Ellen Margrethe Loej, told the council that a peace accord -- if signed on Wednesday -- was "only a first step" and that many hurdles lie ahead.

Loej, who heads the UN peacekeeping mission in South Sudan, said attention must turn to the inter-ethnic fighting, which in some states is just as violent as the struggle opposing the Kiir and Machar camps.

South Sudan has been torn by fighting between forces loyal to Kiir and rebels allied with Machar since December 2013 and the violence has imploded along ethnic lines.

Tens of thousands are estimated to have been killed, nearly 70 percent of the country's population is facing food shortages and some 200,000 terrified civilians are sheltering in UN bases.

The United Nations released a report detailing arms supplies from China to government forces along with shipments of Russian-made and Israeli-made weapons, possibly supplied through regional countries.

Kiir's government had budgeted $850 million for arms contracts from January to July 2014, the report said, although the experts cautioned that the weaponry listed for purchase was not delivered.

Security Council Condemns Use of Sexual Volence as 'Tactic of War' in Iraq and Syria
UN News Centre
August 28, 2015

The United Nations Security Council today condemned the use of sexual violence, in particular sexual enslavement and sexual violence "related to or resulting from forced marriage, committee, including as a tactic of war, in Syria and Iraq," and urged all parties to armed conflict to take all feasible steps to protect civilians from such "abhorrent" acts.

In a statement to the press issued this evening, the Security Council announces that it had been briefed by UN Special Representative for Sexual Violence in Conflict Zainab Bangura on her visit to the Middle East and expressed concern over and condemned all forms of sexual violence in Syria and Iraq.

Council members recalled in their statement that rape and other forms of serious sexual violence in armed conflict are war crimes and constitute grave breaches of the Geneva Conventions. They urged the international community to remain united in the goal of holding those responsible for such crimes accountable.

Underscoring the need for all relevant parties in the region, while implementing counter-terrorism, peacebuilding and conflict resolution activities to take into account the importance of women's empowerment and the protection of women and girls at risk of sexual violence, the Council also expressed the need to bring conflicts in the region to an end in order to reduce the opportunity for sexual violence to be committed.

Members of the Security Council acknowledged the efforts of neighbouring countries in protecting refugees, including from sexual violence, and called on the international community to contribute to the United Nations humanitarian appeals for Syria and Iraq.

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NGO Reports

Sudan: Don't We Matter? Four Years of Unrelenting Attacks Against Civilians in Sudan's South Kordofan State
Amnesty International
August 17, 2015

Since armed conflict began in June 2011 between the Sudanese Government and the Sudan People's Liberation Movement/Army-North (SPLM/A-N), people living in SPLA-N controlled areas of Sudan's South Kordofan state have endured an unrelenting campaign of aerial and ground attacks by the Sudan Armed Forces (SAF). As the

conflict enters unabated into its fifth year, Amnesty International urges the Government of Sudan, the SPLM/A-N, and other governments to take immediate steps to end violations of international human rights law, open up access to humanitarian relief, and uphold the human rights of the people of South Kordofan.

Yemen: 'Nowhere is Safe For Civilians': Airstrikes and Ground Attacks in Yemen
Amnesty International
August 17, 2015

Civilians in Yemen are bearing the brunt in the conflict raging between Huthi militias (and army units loyal to former President Ali Abdullah Saleh), who seized control of the capital and large parts of the country since last September, and anti-Huthi armed groups (and army units loyal to exiled President Abd Rabbu Mansour Hadi), who are supported by a Saudi Arabia-led military coalition. The Saudi Arabia-led coalition forces have also killed and wounded civilians, in unlawful airstrikes which failed to distinguish between military targets and civilian objects in Huthi-controlled areas.

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TRUTH AND RECONCILIATION COMMISSION

Residential Schools, Reconciliation on Curriculum for B.C. Teachers
CBC News
August 19, 2015

Teachers from around British Columbia are gathering in Vancouver to review new curriculum material about residential schools and reconciliation.

Up until now B.C. students didn't typically learn about residential schools until Grade 11 social studies. But this fall, new curriculum material will be available for Grades 5, 10, 11 and 12.

Ken Heales, a teacher in Hundred Mile House, is in Vancouver for the conference. He piloted some of the material last year.

"It was quite surprising to me how many of my students really didn't know about it," he said.

"They were shocked to find out this had happened - they wanted to learn more."

Louise Lacerte, a residential school survivor who has worked in education for 30 years, is also attending the conference.

She is glad to have educational material to help her speak about her experiences with her students and her grandchildren.

"There was an era where we weren't allowed to ... share the information or the experiences that we encountered within those schools," said Lecerte.

"So now I think it's turned around where our children's children can start understanding why we are the way we are."

The material for the conference was developed by the First Nations Education Steering Committee and the First Nations Schools Association.

According to FNESC website, the materials are their "response to the call by the Truth and Reconciliation Commission of Canada for education bodies to develop age-appropriate educational materials about Indian Residential Schools."

Don’t Force Aceh Victims to Shake Hands With the Devil
Jakarta Post
By Bhatara Ibnu Reza
August 21, 2015

Ten years ago at the end of summer in Helsinki, the government and the Free Aceh Movement (GAM) signed a memorandum of understanding to end more than 30 years of the conflict in the province.

This historic moment of Aug. 15, 2005 was celebrated in Indonesia, particularly by the people of Aceh, with hopes that peace would also end violations of human rights and injustice, showing that humanity prevails after all.

Moreover, the "Helsinki Agreement" showed the world that amid all the suffering after the earthquake and tsunami of Dec. 26, 2004, both conflicting parties succeeded to put humanity over their political interests, which had until then blocked all efforts to reach peace in Aceh.

Today, peace should not only be celebrated by former conflicting parties, but also by the common people in Aceh, especially the victims of human rights abuses.

During the past 10 years, peace in Aceh only had a single interpretation - the end of the armed conflict without any legal consequences for violations of human rights.

The victims have never been mentioned as the primary party who should enjoy peace and the resumption of their rights to pursue justice and accountability from the state. Instead, efforts to gain the truth of the violations by either conflicting parties have been discouraged for the sake of peace.

Even worse, these efforts are characterized as attempts to disrupt peace itself. This means impunity is still intact in Aceh.

The Helsinki Agreement mandated the immediate establishment of a human rights court and a commission of truth and reconciliation in Aceh. Prior to the agreement, civil society members in Aceh, together with their colleagues from all over Indonesia, were known for their very progressive movement in promoting human rights as part of the peace process and peace building. One of their significant efforts in promoting human rights based on the MoU was intensive studying, researching and lobbying of the draft of a bylaw or qanun on the truth and reconciliation commission in Aceh. This draft was later adopted by the Aceh legislative council as Qanun No. 17/2013.

Unfortunately, this qanun was delayed simply because Indonesia did not have a national law on the truth and reconciliation commission after the Constitutional Court overturned the law in 2006.

Unfortunately, there was no further discussion in the House of Representatives to replace the previous law. Additionally, the human rights court for Aceh does not yet exist and the immediate impact is that violation of human rights cases, especially during martial law, were never prosecuted.

Meanwhile, the new elite who were GAM fighters and who have now become local government officials have been busy with political and economic interests, using all opportunities brought about by the post-war period. Yet not all former fighters are lucky.

One cause is that during the peace negotiations, the GAM elite failed to thoroughly think how to fully reintegrate their fighters into society. Some of these discontent comrades then decided to take up arms and start guerilla warfare against their former leaders.

This situation triggered new human rights violations in Aceh and, as we learned from experience, the common people are the first casualty of the conflict.

The failure to fulfill such a mandate to set up mechanisms to settle human rights violations and to integrate former fighters under the Helsinki Agreement has led to imbalance between peace and justice for victims.

Peace should not delay justice; the development in Aceh reflects justice denied for thousands of the war survivors and their relatives.

The agreement also mentions the possibility of amnesty for perpetrators, but this provision cannot eliminate state responsibility to provide justice since these were crimes against humanity as recognized in international law.

Justice should be achieved in post-conflict societies; it simply starts with the state's recognition of the human rights violations.

This entails the state's obligation to explain and to admit why and how the state was involved in a situation in which human rights violations occurred.

At this level, the state would first show its goodwill to render the truth to the victims through their policy on opening all available relevant information.

The second part of the state recognition of violations is that the state starts an investigation.

At this level, the investigation should be conducted by the National Commission on Human Rights (Komnas HAM) based on the Law No. 26/2000 on the Human Rights Court.

According to the law Komnas HAM has the right to summon anybody as a witness to hear their information about an actual situation. The rights body also has the right to access documents of all government institutions to seek evidence, including documents of the GAM as one of the alleged perpetrators of human rights violations.

The third part of the above state recognition of atrocities is that justice is carried out by an independent and impartial court. Finally, the victims and their family have the right for moral reparation to respect victims' rights and dignity.

Hence, reconciliation and justice should be achieved immediately for the best interests of the victims. Also, reconciliation and amnesty cannot nullify justice and individual criminal responsibility.

This is shown by Qanun No. 17/2013, which adopted a significant understanding of how to reveal past human rights crimes by emphasizing both reconciliation and justice without any hesitation.

This means the truth and reconciliation commission to be set up in Aceh should not sacrifice the justice seekers while the human rights court in the province would try any case of crimes against humanity and/or genocide - even though the perpetrators are already heard before the truth and reconciliation commission.

This principle should be adopted at the national level since President Joko "Jokowi" Widodo has stated his administration's willingness to reveal past human right abuses.

The problem is that Jokowi only emphasized reconciliation between the victims and the perpetrators without mentioning justice and accountability.

In this framework reconciliation merely forgives the perpetrators without any guarantee of preventing the same crime being committed again by the same perpetrators.

For the victims, this is a new form to prolong impunity since the question is for whom reconciliation is made if the state has never been willing to regret and apologize for what has been done to the victims. Victims would be forced to shake hands with the devil.

Reconciliation should not result in negating justice and human rights, but in accepting one's guilt and admitting to it.

When justice is achieved, Indonesians will learn from their mistakes as a moral society with Aceh being part of our responsibility.

Continuing to delay victims' rights for the sake of peace will amputate the soul of the peace itself.

It is a must for the state to speed up its fulfillment of victim's rights and social justice in Aceh to show that peace completely belongs to the people and not to a handful of elites.

Residential School Survivors Offer Input Into Truth & Reconciliation Database
Global News
By Teri Fikowski
September 1, 2015

A forum for residential school survivors was held at the First Nations University of Canada on Monday to determine how much of their stories they want shared with Canadians.

The Truth and Reconciliation Commission collected hundreds of thousands of interviews and documents over the years, including student identities, their stories, and medical and police records.

Now, they want to make the records as accessible to the public as possible for public education through an online database.

However, the director of The National Centre for Truth and Reconciliation, Ry Mordan, said the centre wants to make sure the stories are shared in the most respectful way possible.

"There's that fine line, in that we don't want to step over the line of exposing too much sensitive information of survivors," explained Morgan. "So, we're just sitting down and checking in."

Regina is the first stop in 16 across the country, and the majority of people in attendance Monday seemed to want most details shared with Canadians.

Leona Wolfe from the Muskowekwan First Nation said her mother witnessed her sister's neck break after being pushed down the stairs while attending a residential school.

She said she understands why some people don't want stories like that shared with the public, but adds that it's important for the truth to be told and taught in schools.

"I just want to let the world know, 'Hey this happened. It was real,'" she explained. "It was done to me, it was done to my children. I'm not blaming nobody. We all make choices but to me this is where it stemmed from."

The database is expected to be launched online in November.

The National Centre for Truth and Reconciliation is asking anyone who wants to give consent for their files or stories to be told, or withdrawn, from the website to contact them.

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COMMENTARY AND PERSPECTIVES

Russia's Invasion of Ukraine: What does International Law Have to Say?
By Thomas Grant
August 25, 2015

> **Apart from Iraq, no member State of the United Nations has done anything quite like it. First, in 2008 against Georgia, then on an ever widening stage since February 2014 against Ukraine, the Russian Federation has invaded a fellow member State and forcibly separated territory belonging to that country. No other state, not even Russia before the invasions, had made any claim to that territory.**

Even Iraq had made known its rejection of Kuwait's statehood from the start. To that extent, we had warning of what was to come. Not that a warning about an impending act of aggression cures the act. A centerpiece of modern international law is that territory changes hands only by consent, never by force. The rule of territorial stability is more than just another rule of international law. It is the indispensable rule of our system of law between States, and to let it lapse will send us back to an age of disorder. However you look at it, it is evident that relations among states-and the system of law that states have built since 1945-will change fundamentally, if we dispense with that rule.

Russia's assault on that rule, and thus that system, is the subject of my new book Aggression Against Ukraine: Territory, Responsibility, and International Law. Let us assume, even as the system of international law is in-and needs-constant evolution, that we should seek to preserve the basic stability of law that results from settled expectations. And let us assume that settled expectations about which states have responsibility for which territories are particularly important. What are we to do about a state that breaches the rule of territorial stability?

Iraq's invasion and annexation of Kuwait met with a robust international response. The Security Council acted; and states joined Kuwait in an exercise of collective self-defense. The annexation failed; Iraq was expelled.

The difficulty is that the Russian Federation is not Iraq. The Russian Federation is a Permanent Member of the Security Council. So the Security Council has not acted. And the Russian Federation, as its leaders since February 2014 have reminded us repeatedly, has a massive arsenal of nuclear weapons and the means to deliver them. So the military response to aggression has been muted.

Faced with this situation, unprecedented in the United Nations era, governments since the start of 2014 have found themselves confused about the proper response. True, some have adopted sanctions, some adopting more stringent sanctions than others. The United States has sent a modicum of military assistance to Ukraine and has reaffirmed its NATO commitment to the Baltic States of Estonia, Latvia, and Lithuania.

Russia has worked to deter a more vigorous response. Sabre-rattling is a mainstay of Russia's deterrence strategy, but there is more to Russia's strategy than that. To a considerable extent, Russia, in working to keep us from responding to its aggression, exploits our failure to understand and to apply international law.

We need to clear the air about international law if we are to respond appropriately. At least five points of international law in particular need to be clarified.

First, as I have written elsewhere with historian Rory Finnin, it confuses things to refer to the conflict in Ukraine as a civil war. Western media, the BBC for example, routinely refer to it as such, identifying the forces holding Donetsk and Luhansk as "rebels," and failing to note the presence-acknowledged by a range of credible observers-of Russian personnel or the dependence of the putative "rebels" on Russia's armed intervention. The salient fact of the situation is that Russia has invaded Ukraine, not that an indigenous force has risen up spontaneously against the central government; it hasn't.

The legal conclusion to be drawn from this fact is that Ukraine has an inherent right of self-defense against Russia's aggression-including the right to organize its self-defense collectively. By no means does international law impede other States from assisting Ukraine. To the contrary, international law envisages it.

Second, the territory of Ukraine is the territory within the borders of Ukraine that every state in the world-including Russia-has recognized. Russia tries to cloud this point, when it threatens that the defence of Ukraine will trigger a regional or global war. We see this tactic at work for example when a retired Russian general, speaking to the BBC earlier this month, says that any attempt by Ukraine to recover control of Donetsk and Luhansk in the east will be to cross a "red line." Presumably, the general means that if Ukraine attempts to defend against Russia's forcible separation of Ukrainian territory, Russia will seize even more Ukrainian territory. The general's threat is legal nonsense. It rehashes the position that Russia used in 2008 when it invaded Georgia: Georgia had attempted to restore its effective control in South Ossetia and Abkhazia, and Russia invaded. Ukraine holds sovereignty over all the territory of Ukraine. Russia's illegal presence in parts of Ukraine does not displace Ukraine's legal rights.

Russia's illegal presence does however attract legal responsibility to Russia for conduct in that territory, a result supported by the European Court of Human Rights' judgments concerning the northern part of Cyprus and the Russian-occupied parts of Moldova. This leads to a further point, to which I will turn below.

Third, clothing aggression in the language of self-determination does not change what it is. Aggressors have alleged before that indigenous movements have sought freedom under the barrel of a gun, and international law sees through the ruse. Nobody talks about a "State" of Manchukuo without noting that Japan created that entity by invading China. Nobody should talk about Crimea as if it engaged in a valid act of self-determination; or about Donetsk and Luhansk as if these places sua sponte broke away from Ukraine. The situation in all three places is the direct result of Russia's armed intervention. As to Ukraine's domestic politics, whatever its complexities, the people of Ukraine support unity, a position disclosed by polls and suggested by the absence of any effective separatist movement prior to the invasion. The supposed self-determination acts have been dismissed as void and without effect by the UN General Assembly, the Council of Europe Parliamentary Assembly, and the OSCE Parliamentary Assembly President. There is no valid reason to prefer Russia's characterizations over those of the pre-eminent available global and regional organizations.

Fourth, there is the omnibus rejection of international law as relevant to the conflict. This is part and parcel of John Mearsheimer's view, as expressed in Why the Ukraine Crisis is the West's Fault, a piece arguing that "liberal delusions" led the West to adopt "provocative policies" and that these "precipitated the crisis in the first place." It exceeds the scope of a post on international law and the war against Ukraine to address in detail Professor Mearsheimer's thesis, but some general observations may be made.

The main observation to be made about Mearsheimer's thesis is this: for all its dismissal of "liberal delusions," it

has nothing of substance to say about what presumably its adherents would consider one of the principal "delusions": international law. This is not adequate as a mode of argument. Mearsheimer's thesis rests on the assumption that "strategic interests" trump vested rights. But rights are the mainstay of law. To say that one thing trumps another without considering the force and effect of that other thing is, at best, sloppy thinking. Russia has no right cognizable under law against the territorial integrity of its neighbors. In truth, Russia does not even have a claim against its neighbors-none, at least, was articulated before 2014, and the exact opposite was articulated repeatedly. Russia repeatedly, by treaty and by practice, almost continuously since 1991, and without reservation or exception, acknowledged the sovereignty of its neighbors within the borders that they inherited upon independence.

As for the suggestion, sometimes heard, that the Black Sea Fleet basing agreements qualified Russia's acknowledgment of Ukraine's sovereignty, this is nothing short of bizarre. By their very object and purpose, those agreements presuppose that the host state-Ukraine-possessed sovereignty: you don't lease a territory to a visiting state if you don't hold the legal rights to the territory. In any case, the agreements by their terms, as well, make clear that Russia was just a visiting State and that Ukraine was the sovereign in Crimea.

Then there is the integrative development of international institutions in Europe, the EU and NATO in particular. An imagined threat from NATO (an alliance that would be hard-pressed to send so much as one armored division to Ukraine) does not override 70 years of international law. Mearsheimer says that Russia was "too weak" in the 1990s to do anything about NATO's eastward expansion. But this is beside the point. If Russia had had unbridled power, it still would have had no right to do anything about NATO's eastward expansion. As the successor state to the Soviet Union, the Russian Federation of all states should know this. Arguably the high-water mark of the USSR's international law policy in the Cold War was the courtroom success of its ally Nicaragua against the United States in the Military and Paramilitary Activities case. One might be loath to recall the poor showing in that case, but the International Court of Justice, whatever one thinks of its showing in the case, made a powerful point about the right of states to pick whatever friends they wish. The Court is taken to task, inter alia, for having failed to give due consideration to the United States' argument about collective self-defense, but what it said about alliances and domestic political order is good law. The Court on those matters said this:

A prohibited intervention must... be one bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely. One of these is the choice of a political, economic, social and cultural system, and the formulation of foreign policy. Intervention is wrongful when it uses methods of coercion in regard to such choices, which must remain free ones. ICJ Reports 1986, Judgment, June 27, 1986, p. 14, 108 (para. 205).

And as to alliances in particular:

Similar considerations apply. ... Whatever the impact of individual alliances on regional or international political-military balances, the Court is only competent to consider such questions from the standpoint of international law. From that aspect, it is sufficient to say that State sovereignty evidently extends to the area of its foreign policy, and there is no rule of customary international law to prevent a State from choosing and conducting a foreign policy in co-ordination with that of another State. Ibid., p. 133 (para. 265).

A political scientist might dismiss this law as "liberal delusion," and might equally dismiss the rich variety of associations and co-ordinations that States have elected under this law. But it is this law that has existed and developed in the modern era, and it is this law that has contributed to an unprecedented period of peace among the major powers and to world-changing growth in trade, investment, and the movement of people and ideas. Among other things, this law assures that "state sovereignty" means that each state is free to "choos[e] and conduct[...] a foreign policy in co-ordination with that of another State." Ukraine, if it were seeking to associate with NATO, and by actually associating with the European Union, did so within its international law rights. Whatever Russia's geopolitical complaints, Russia has no right to prevent Ukraine from doing so. Ousting international law may be an attractive option for some states and for some theoreticians, as it clears away a messy underbrush of procedures and definitions, but the resulting vacuum would be a very different world from that in which we really live.

Finally, the world in which we really live contains a range of institutions to apply the law. There is that age-old critique that international law has no policeman. But tell that to the general counsel of a hydrocarbon company that is considering an investment in the waters off Crimea, especially if an international court or tribunal has added its voice, in the form of a binding judgment or award, to the General Assembly's declaration that the putative annexation of Crimea is not to be recognized and thus not to be given any effect. There are many places to invest where the real sovereign also enjoys the real exercise of its rights; why embroil oneself in a situation arising out of a gross violation of a fundamental rule of international law? Try the "no policeman" critique as well on a

country like Ecuador, which learned that interim measures from an UNCITRAL tribunal made the enforcement of its national court judgment against Chevron far more difficult than it had thought, including in the courts around the world where it had intended to pursue the company's assets. (Full Disclosure: I served on Chevron's legal team in the jurisdictional phase of the UNCITRAL proceedings.)

Or what about the regional human rights mechanisms? Surely, organs like the European Court of Human Rights at Strasbourg are more about aspiration than reality? Tell that to Turkey, which now faces a substantial European Court judgment for money damages as a result of its legal responsibility for the situation in northern Cyprus. These dispute settlement mechanisms have teeth, because we live in a world where the law is indispensable to the orderly management of human affairs at multiple levels. A barbarian at the gate might disagree; but the world both within the city walls and without functions under law however noisy the barbarian's protests become.

Russia works hard to create doubts and anxieties on the part of western governments and the public whom they serve, knowing that no democratic country commits readily to support a cause fraught with ambiguity, especially when the relevance of that cause to the country's interests itself is uncertain.

We should not be fooled. The situation in Ukraine is clear-cut. And, if Russia prevails in that situation, there will be consequences for our security.

The proper understanding of the situation in Ukraine under international law accords with more robust collective defense of Ukraine and the region. Some commentators and some legislators have called for the more robust defense. A reasoned view holds that the seemingly cautious approach in truth may prove dangerous in the long run. As for the legal response, this has an autonomous role as well as a complementary one. The legal response exists independently of practical measures on the ground, because we live in a world of deep interconnections, and the law, if we trust in the law and the institutions that apply it, can multiply the costs of aggression for the aggressor and for others who would otherwise profit from the aggressor's acts. It has a complementary role, because the more robust response is what international law both permits Ukraine to adopt and the rest of us to support. In responding to Russia's war against Ukraine, we need to pay more heed to what international law has to say.

Should War Crime Perpetrators Pursue Doctorates?

Justice Hub

By Mark Kersten

August 27, 2015

> **The first-ever individual convicted by the International Criminal Court (ICC) has asked judges at The Hague-based Court to grant him early release so that he can pursue a PhD. The former warlord and rebel leader Thomas Dyilo Lubanga, a man sentenced to fourteen years for conscripting child soldiers to fight in a brutal war in the eastern Democratic Republic of Congo, wants to attend Kisangani University to study "the sociology of ethnic harmony". In Lubanga's own words: "I hope to help identify a new form of sociology that will help the tribal groups to live together in harmony".**
>
> Most observers appear to be oscillating between a sense of incredulity and simply being incensed. How could a convicted war criminal be granted early release in order to study how to prevent precisely the types of crimes he himself is ultimately responsible for? The mere suggestion smacks of some kind of cruel and unusual joke. As one tongue-in-cheek comment had it, perhaps Lubanga could insist his crimes were simply a result of "participant observation", the popular research method of imbedding oneself in the very social and political setting under examination.

Whether he is released now or at the conclusion of his sentence in two years, the issue of Lubanga's interest in pursuing higher education isn't, in fact, anything new for alleged war criminals and raises important yet insufficiently answered questions within the realm of international criminal law and justice. Let's take a look at two other examples: Libya's Saif al-Islam Gaddafi and northern Uganda's Sam Kolo.

The case of Saif al-Islam Gaddafi

Unlike Lubanga, Saif al-Islam Gaddafi managed to fit in his higher PhD studies before emerging as a central figure in the ICC's investigation of war crimes and crimes against humanity during Libya's 2011 uprising and civil war. Gaddafi infamously attended the London School of Economics where he submitted a PhD on democratisation and global civil society. The full name of Gaddafi's thesis was "The Role of Civil Society in the Democratization of Global Governance Institutions: From 'Soft Power' to Collective Decision-Making?". Remarkably, the thesis often spoke to precisely the kind of world that those who support international criminal justice seek. In one passage, Saif writes: "The international order has a responsibility to protect the basic rights of those citizens who live under non-liberal governments". Of course, not everyone was fooled into believing Saif would emerge as some pro-democracy, pro-human rights, pro-justice alternative to his despotic father. But most turned a blind eye to the whole fiasco...

...That is until Libya descended into civil war, and it emerged that Saif al-Islam Gaddafi ardently supported his father's crackdown on civilians in Libya. At the time, it was also revealed that Gaddafi's academic achievements had been doctored (excuse the pun). Rather, a nefarious network of primarily British political and business connections concocted to promote Saif as the future 'liberal' leader of Libya, secure Western interests in the oil-rich nation, rehabilitate the Gaddafi regime, and, as an aside, write Saif's PhD for him. For a while at least, though, Mr. Gaddafi was Dr. Gaddafi - and very few people had an issue with it.

The case of Sam Kolo

Not long after the 2011 civil war came to an end, another alleged perpetrator of mass atrocities received a degree in northern Uganda. In January 2012, Sam Kolo, a former senior commander in the Lord's Resistance Army (LRA) "completed a remarkable journey from the life of a rebel to a graduate" and was rewarded with a degree in business administration from Gulu University. Kolo, who led an LRA delegation during peace talks in 2004, had previously received an amnesty under Uganda's 2000 Amnesty Law and, according to one observer, following his defection from the LRA, the former rebel commander "provided valuable intelligence to the Ugandan army in their hunt for Joseph Kony, the long-time leader of LRA". Kolo was eventually supported in his pursuit of a degree by the Ugandan government's scholarship scheme. Notably, Kolo has regularly expressed regret over his membership in the LRA, stating on the day of his graduation that it prevented him from pursuing his dream of becoming a university lecturer.

So what should we make of all this? Each of these stories is undoubtedly unique and this piece shouldn't be read as suggesting there is (im)moral equivalency between Lubanga, Kolo, and Gaddafi. Where Kolo had sought to broker peace, Gaddafi and Lubanga were responsible for fomenting violence. Where northern Uganda has an amnesty for perpetrators of mass atrocities and is far more open to re-integrating former combatants, doing so is much more difficult in Libya and, to a lesser extent, the DRC. Where Kolo has expressed regret for his actions and involvement in the LRA, Lubanga and Gaddafi have not.

No easy answers

Still, these stories raise important questions: should convicted and alleged war criminals be allowed - perhaps even encouraged - to pursue higher education? Is there, as many believe, something curative in the pursuit of education that might help to deter relapses into criminality? Is there something morally egregious when former perpetrators of mass atrocities are afforded educational opportunities that they have - by their very actions - denied thousands of others? Is the best alternative to prevent them from pursuing any education and thus letting them 'rot in prison' or turning a blind eye and sending them back into the world without any support? What would be the risks in doing so? Do tribunals have any responsibilities for supporting released convicts? Should the tribunals and the international community consider the strategies of domestic prison systems, where education is often encouraged as a means of healing and skills development?

As the world of international criminal justice plods along and matures, new and uncomfortable questions will undoubtedly emerge, including what the post-incarceration life of war criminals should look like. There are no easy answers. The pursuit of higher education may leave a bitter taste in the mouths of some. But given all of the options and the ever-present risk of war criminals returning to their old habits, encouraging them to pursue an education may be a least-worst option.

Malaysia Airlines Flight MH17–Possible Legal Avenues for Redress (Part 1)

Opinio Juris

By Aaron Matta And Anda Scarlat

August 27, 2015

17 July 2015 marked one year since the downing of Malaysia Airlines flight

MH17 over eastern Ukraine, resulting in the death of 298 persons (passengers and crew). As approximately two thirds of the victims were Dutch nationals, the tragedy is particularly poignant in The Netherlands. The facts surrounding the incident are not yet clear, with suggested scenarios for the downing of the aircraft including firing by pro-Russian rebels or from a Ukrainian fighter jet. International investigations are still ongoing and are looking, on the one hand, at the causes of the incident and, on the other hand, at criminal responsibility. The Netherlands is taking an active role in both investigations.

> The past year has also been marked by increasing speculation on the legal avenues for redress available to the victims' families, the affected states, and the international community as a whole. The options include: state responsibility (inter-state litigation in the International Court of Justice (ICJ), or claims against a state who violated its human rights obligations under the European Convention on Human Rights (ECHR)); and individual criminal responsibility (at the national and international levels).

This first of two posts will look at the two options for state responsibility, while our second essay will consider proposals for international criminal responsibility and the prospect of setting up an international criminal tribunal.

Inter-State Dispute Resolution: International Court of Justice

Shortly after the downing of MH17, speculation began about possible inter-state claims before the ICJ. As aptly explained here, a possible claim against Ukraine could be based on the precedent in the Corfu Channel Case, for causing or failing to prevent the downing of MH17 while it passed through Ukrainian airspace. The precise basis for the claim would depend on the outcome of the factual investigation. First, responsibility could arise if Ukraine were directly responsible for the incident through a positive act, such as the use of a weapon. Second, responsibility could arise if Ukraine had failed to avert a foreseeable risk to civilian aviation within its airspace, given that there was ongoing fighting in eastern Ukraine and that Ukraine had already decided to close its airspace up to 32,000 feet, which was just short of the altitude at which MH17 was flying.

Furthermore, if it is found that those responsible for downing MH17 were receiving support from another state (for example Russia, as is widely argued) the supporting state could face a claim along the lines of that raised in the Nicaragua Case, for "'organizing or encouraging the organization of irregular forces or armed bands ... for incursion into the territory of another State' and 'participating in acts of civil strife ... in another State', in the terms of General Assembly resolution 2625 (XXV)" (para 228).

Substantive issues aside, another pertinent consideration is that the ICJ's jurisdiction is fundamentally based on state consent (as per Article 36(1) of the ICJ Statute). As explained here, the potential respondent states (for example Ukraine or Russia, if the result of the investigation points towards them) have not made a declaration accepting the ICJ's jurisdiction in respect of inter-state disputes (Article 36(2)). Therefore, the feasibility of an ICJ claim would depend on the respondent states accepting the jurisdiction of the ICJ for this particular claim via a special agreement (Article 36(1)). This makes inter-state litigation on the MH17 incident relatively unlikely.

In addition, such a claim would have to be brought to the ICJ by one of the potential applicant states, for example The Netherlands. This illustrates the relative impotence of the individual in the international system: the victims' families depend on a state choosing to bring a claim under diplomatic protection on behalf of its nationals. As yet, there have been no indications that an ICJ claim would be pursued.

The difficulties in bringing a contentious case before the ICJ may be bypassed if one of the UN organs, for example the General Assembly or Secretary General, requests an Advisory Opinion on the MH17 incident, as suggested by Olexander Horin, Ukrainian Ambassador to The Netherlands [see video, relevant parts are in English]. Even though this may give some clarity on the legal position, the Advisory Opinion would not be binding on the responsible state(s), and may therefore be of limited value in practice.

Human Rights Claims: European Court of Human Rights and Domestic Litigation

Potentially responsible states could, however, face claims directly from the victims' families under the ECHR. Such a case, Ioppa v Ukraine, was lodged with the European Court of Human Rights (ECtHR) in November 2014,

alleging that Ukraine has violated its human rights obligations, presumably under Article 2 (the right to life). In addition, the applicants could also bring a claim against Russia, if the ongoing investigation concludes that Russia was sufficiently involved in the conflict in eastern Ukraine, as detailed below. Both Ukraine and Russia are parties to the ECHR, which means that individuals can bring claims against them before the ECtHR for alleged human rights violations (Article 34 of the ECHR).

For such a case to be heard by the ECtHR, the applicants would have to show that the respondent state(s) had jurisdiction over the alleged human rights violations under Article 1 of the ECHR. For example, Russia may have had jurisdiction over any human rights violations if it exercised "effective authority" over the relevant area in eastern Ukraine, subject to the findings of the ongoing investigations (see Ilaşcu and Others v Moldova and Russia, Decision on Merits, ECtHR Grand Chamber, 8 July 2004, para 392). At the same time, Ukraine may also have had jurisdiction over any violations, as the state on whose territory the violations occurred, regardless of whether it lacked de facto control of the area (Ilaşcu, para 333). However, some have expressed doubt about the likely success of such claims before the ECtHR, inter alia due to difficulties in showing causation, given that the details of the incident, and therefore the foreseeable risk to civil aviation at the time, are still unclear. These impediments may be easier to overcome once investigations into the incident have been concluded.

It should also be noted that, under Article 35(1) of the ECHR, the victims' families would first have to exhaust any available local remedies against the state in question, before bringing the case to the ECtHR. In practice, this means bringing claims against states in the relevant national courts first, regardless of whether the applicants live outside of the forum state (see Demopoulos and Others v Turkey, Decision on Admissibility, ECtHR Grand Chamber, 1 March 2010, para 98). If, as a result of such domestic proceedings, the victims' families are granted the redress they are seeking, ECtHR proceedings may become unnecessary. In light of this requirement under the ECHR, it is doubtful whether the claim brought in Ioppa will be heard by the ECtHR, as it is unclear whether the applicants exhausted local remedies in Ukraine before lodging the claim with the ECtHR.

Furthermore, even if a case was successfully brought by the complainants and the ECtHR ruled in their favor, recent developments and proposed changes in Russia's constitutional law may threaten compliance with any potential judgments against Russia. In any event, there are no claims related to MH17 currently lodged with the ECtHR against Russia.

Of course, the ECtHR could also hear an inter-state complaint for breach of human rights. Given that Ukraine has already brought a number of claims against Russia before the ECtHR regarding the conflict in eastern Ukraine, it is quite possible that it may wish to bring a claim regarding the downing of MH17. Many of the same legal issues regarding jurisdiction and compliance with judgements would also arise here, as explained above in relation to individual claims.

While there may be some difficulties in making out the substantive elements of a claim against a responsible state, whether in the ICJ or the ECtHR, the main impediments are still based on garnering the requisite political will from states to either: bring a claim against another state in the ICJ; accept the jurisdiction of the ICJ to hear the case; and comply with any judgments made by the ICJ or the ECtHR. In light of this, claims in the ECtHR are the more feasible option, as they do not depend on the respondent state's consent. An additional advantage is that the ECtHR allows individuals to seek redress directly, without depending on a state to bring a case on their behalf. Furthermore, the ECtHR is an avenue which is likely to be pursued in practice: individuals have already brought a claim against Ukraine regarding MH17, and Ukraine has brought a number of claims against Russia in relation to other aspects of the eastern Ukrainian conflict (and is therefore more likely to bring another in relation to MH17).

Dependence on the political will of states is also a major weakness of individual criminal responsibility. As we have seen from recent attempts to set up an international criminal tribunal to bring the alleged perpetrators to justice, this type of mechanism is also heavily reliant on the political will of states, whether this means setting up a new tribunal or cooperating with an existing one. These issues will be addressed in our second post.

Malaysia Airlines Flight MH17–Possible Legal Avenues for Redress (Part 2)
Opinio Juris
By Aaron Matta And Anda Scarlat
August 28, 2015

> **Following on from our previous commentary on potential state responsibility, this post will look at the role of individual criminal responsibility in addressing the downing of MH17. Proposals have been made for using either existing mechanisms or for setting up a new tribunal**

to address this incident specifically. Determining the best avenue ultimately depends on the outcome of the investigations into the incident and the political realities of the situation.

At the outset, it is important to note the most recent major development: the Russian veto, on 29 July 2015, of a proposed United Nations Security Council (UNSC) resolution which aimed to set up an international tribunal to prosecute the individuals responsible for downing MH17. Despite this apparent setback, which is explored further below, a wide variety of options remain open.

Domestic Prosecution

First, the alleged perpetrators could face domestic prosecution in a state which has jurisdiction over the crimes in question. The most familiar bases for jurisdiction under international law would be: territorial (i.e. Ukraine, in whose territory and/or airspace the alleged crimes took place; or Malaysia, as the state of registration of the aircraft, in accordance with Article 3(1) of the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft); nationality (depending on the nationality of the alleged perpetrators, which has not yet been established); and passive personality (depending on the nationality of the victims, so including states such as The Netherlands, Malaysia and Australia). In addition, if international crimes are alleged, any state could exercise universal jurisdiction over the alleged perpetrators, for example on grounds that the incident amounted to "war crimes"; this would depend on the various states having legislated to give their domestic courts jurisdiction to prosecute international crimes. In addition, it may be very difficult to secure the arrest and surrender of accused persons for prosecution at the national level, especially if they are high ranking officials.

It is possible that The Netherlands would exercise jurisdiction over these alleged crimes, based on either passive personality or universality, given the important role it has played in investigations thus far, as well as the fact that a large number of its nationals died during the incident. Although these circumstances are likely to result in support for such a prosecution at the domestic level in future, The Netherlands (alongside states such as Australia, Belgium, Malaysia and Ukraine) is currently pushing for other avenues for prosecution, such as an international tribunal.

One could also argue that Ukraine and Malaysia have more robust jurisdictional claims over the incident by virtue of the territoriality principle. However, this argument is typically based on the practical reality that these states would, in most cases, have better access to the witnesses and other evidence needed for prosecution. In the case of MH17, given the strong involvement of The Netherlands and other states in the investigation thus far, these investigating states may be in a better position, de facto, to carry out the prosecutions, regardless of the relative robustness of the de jure basis for jurisdiction.

International Criminal Court

Secondly, if international crimes falling within the ambit of the Rome Statute of the International Criminal Court (ICC) are alleged, the perpetrators could also be tried before this Court. However, as Ukraine is not a party to the Rome Statute, the ICC cannot exercise jurisdiction over the alleged crimes under Article 12(2), unless Ukraine accepts ICC jurisdiction on an ad hoc basis under Article 12(3). Ukraine has already made such an Article 12(3) declaration on 17 April 2014, accepting ICC jurisdiction over crimes committed within its territory. However, this declaration is temporally limited to the period between 21 November 2013 and 22 February 2014. Nevertheless, Ukraine may choose to make a further Article 12(3) declaration which does cover the events of 17 July 2014, accepting ICC jurisdiction over the downing of MH17. Again, this would depend on Ukraine's political will to make such an additional declaration.

In addition to an Article 12(3) declaration, the ICC would also require its jurisdiction to be triggered under one of the three mechanisms outlined in Article 13 of the Rome Statute. According to Article 13(a), a state party to the Rome Statute, for example The Netherlands, could make such a referral; Ukraine would be unable to do so itself because it is not a state party to the Rome Statute. If such a referral is made, its temporal and territorial breadth could be crucial. Given the recent controversy about the Comoros referral to the ICC, if the new referral is limited to the downing of MH17 and nothing else, the issue of situational gravity may mean that the Office of the Prosecutor (OTP) declines to initiate an investigation into the incident, following a preliminary examination (Article 53(1)). This may be remedied by a broader referral being made, perhaps encompassing the wider conflict in Ukraine, depending on the scope of Ukraine's potential future Article 12(3) declaration. Further developments regarding the Comoros referral may be of relevance. Alternatively, under Articles 13(c) and 15, the OTP could initiate an investigation proprio motu. The same concerns of situational gravity may, inter alia, also be relevant here. Lastly, under Article 13(b), the UNSC could refer the downing of MH17 to the ICC, irrespective of whether

Ukraine makes an Article 12(3) declaration. However, given Russia's current opposition to international prosecutions for this incident (on which see further below), such a resolution would probably be vetoed.

Consequently, a prosecution in the ICC is unlikely in the near future. This highlights, once more, that political will is often the driving force behind international prosecutions.

New International Criminal Tribunal

Third, a draft UNSC resolution to set up a tribunal under Chapter VII of the UN Charter was recently vetoed by Russia. According to the draft statute of the proposed tribunal, it would mix together the features of existing ad hoc tribunals (such as the International Criminal Tribunal for the Former Yugoslavia, ICTY) and a hybrid tribunal indirectly created by a UNSC resolution (such as the Special Tribunal for Lebanon, STL). On the one hand, like the ICTY, the proposed tribunal would be created directly by a UNSC resolution and part of its material jurisdiction would draw on international law (Article 2). On the other hand, like the STL, the proposed tribunal would draw other parts of its material jurisdiction from the domestic legislation of Malaysia and Ukraine (Articles 3 and 4, respectively). Finally, like both of these models, the proposed tribunal would have primacy over national prosecutions (Article 10). In any event, given the recent Russian veto, it is unlikely that the UNSC will be able to create such a tribunal in the near future.

To overcome this hurdle, a number of alternative structures could be considered. One option would be a court created by an agreement between the UN and a state, similar to the Extraordinary Chambers in the Courts of Cambodia (ECCC) and the Special Court for Sierra Leone. The agreements creating these courts were negotiated by the UN Secretary General and were approved by the UN General Assembly (UNGA). This mechanism would therefore circumvent the UNSC veto, allowing the court to come into being despite opposition from any of the permanent five members.

Furthermore, earlier commentators had suggested that a Lockerbie-style tribunal would be the best fit for the MH17 incident. It is important to emphasize that the court in the Lockerbie case was not created by the UNSC and it was therefore very different from recent attempts of the UNSC to set up an MH17 tribunal. Although the UNSC did 'welcome' the Lockerbie prosecution, the court hearing the Lockerbie trial was part of the Scottish judicial structure and it applied Scottish law. The only extra-national feature of the trial was its location in The Netherlands. Therefore, the establishment of a Lockerbie-style tribunal is a very different proposition from the recent proposals for a tribunal created by the UNSC under Chapter VII of the UN Charter. This differentiation is fortuitous, as it would allow the establishment of a tribunal for MH17 without the need for UNSC approval. However, despite the similarities in the subject matter of the Lockerbie and MH17 incident, in that they both involved the downing of an aircraft, the Lockerbie approach may not be the best fit for potential MH17 prosecutions. Most importantly, such a tribunal would have insufficient extra-national features to lend legitimacy to the prosecutions and to encourage the cooperation of states in surrendering accused persons to the tribunal.

Most recently, there have been new proposals for the creation of an international tribunal with UNGA approval, following the Russian veto in the UNSC. However, as explained here, it should be noted that it is highly questionable whether the UNGA has the legal power to create such a tribunal. The alternative would then be the creation of a tribunal by some or all of the affected states via a multilateral treaty (much like the ICC), potentially with the subsequent support of the UNGA under the procedure set out in Article 18(2) of the UN Charter [latter source available in Dutch only]. The affected states would, in this case, carry out the prosecutions by pooling their territorial, passive personality and (possibly) nationality jurisdiction. Any subsequent UNGA backing would simply add legitimacy to the tribunal, but the UNGA would not be setting up the tribunal itself, nor approving the conclusion of a treaty between the UN and a state to set up a tribunal (as was the case with the ECCC, for example). However, the importance of added legitimacy should not be underestimated: this feature would make such a tribunal preferable to, for example, a Lockerbie-style tribunal and may therefore encourage more state cooperation in surrendering accused persons to the tribunal.

It is also important to remember that, whichever court structure, if any, is ultimately chosen, the effective prosecution of the alleged perpetrators would once again be dependent on the willingness of various states to cooperate with the potential court, for example by arresting accused persons and surrendering them to the custody of the court. As shown by the recent non-cooperation of South Africa with the ICC arrest warrant for President Omar Al-Bashir, such cooperation cannot be taken for granted. This exposes one of the greatest weaknesses of the international criminal system: its dependence on state cooperation, and therefore on political will.

Thus, despite the recent Russian veto, several other options remain open for bringing the individual perpetrators to justice. Yet, much like the possible claims against states explored in our previous commentary, few of these

options are available in practice without the requisite political will of key players. On the other hand, even though there are ways to circumvent the opposition of certain states, this may not be constructive for reaching the ultimate goal of achieving justice and preventing a reoccurrence of this type of tragedy, given the need for cooperation from such states for any tribunal to function in practice. Therefore, a more inclusive approach may be preferable if it encourages wider cooperation with the process.

Nonetheless, if a new international tribunal proves to be the only means of bringing the alleged perpetrators to justice, there is the possibility of carrying out the prosecutions in absentia (as exemplified by the STL). The non-cooperation of states should not be allowed to stand in the way of justice being done for the victims in some (limited) way, even if the punitive element of the process is compromised by not having the accused persons in the custody of the court. However, this should be an option of last resort only, in order to protect the legitimacy of the proceedings and of international criminal justice more broadly.

Furthermore, it is regrettable that the international community must resort to setting up yet another international tribunal to deal with the MH17 incident, rather than being able to use the established structures of the ICC. Despite progress being made over the years, the Rome Statute is still far from being universally ratified and the ICC's triggering mechanisms can be highly politicized. Setting up yet another international tribunal requires considerable resources and may lead to further fragmentation in international criminal law. On the other hand, the substantive jurisdiction of a new tribunal can be better tailored to the MH17 incident, as shown in the draft statute of the recently rejected tribunal; furthermore, a new tribunal would avoid adding even more pressure on the limited resources and operational capabilities of the OTP at the ICC. These are the trade-offs of international criminal justice, meaning that no one option will be a perfect fit. However, this also shows that the system offers both diversity and flexibility in addressing different challenges, which may be the system's greatest strength.

Finally, we must remember that individual criminal responsibility and state responsibility are not mutually exclusive and can both be pursued to address the consequences of the MH17 incident.

Two Wrongs Don’t Make a Right: Ukraine Retaliates for Savchenko in Violation of IHL

EJIL: Talk
By Ilya Nuzov
September 1, 2015

> **In our post concerning Ukrainian military pilot Nadiya Savchenko, which can be found here, Anne Quintin and I addressed the International Humanitarian Law (IHL) implications of Russia's detention and prosecution of the officer, whose ongoing murder trial is postponed pending the outcome of a change of venue motion by the defence. Meanwhile, Ukraine has thrown a judicial rock of its own by detaining two Russian officers - Evgeny Erofeev and Aleksandr Aleksandrov - who face charges of terrorism and aggression in Kiev in the coming weeks. In this post, I would like to identify the contradictions of Ukraine's positions with respect to the two situations, as well as its concomitant IHL violations, and to address the possibility of reconciling Ukraine's rhetoric and practice with the rules of IHL.**
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> On or about May 16 2015, two wounded fighters who identified themselves as officers of the Russian army were captured by Ukraine's Armed Forces (UAF) following a firefight near Lugansk that resulted in the death of one Ukrainian soldier. The detainees were immediately treated and subsequently evacuated to Kiev, where they remain hospitalized to this day. Several days after their capture, both were indicted under Article 258 of the Ukrainian Penal Code (UPC) for their participation in the commission of a terrorist act, organized and carried out by the Lugansk People's Republic (LPR), resulting in death. Notably, there appears to be no evidence, or allegations, that the Ukrainian soldier was killed in violation of IHL. Most recently, a charge of aggression under Article 437 of the UPC was added to the terrorism charge.

On May 21, the Security Services of Ukraine confirmed that Erofeev was captain, and Aleksandrov sergeant, of the 3rd Brigade of the Special Forces of the Military Intelligence Directorate of the Main Staff of the Armed Forces of the Russian Federation (Russian abbreviation 'GRU'), with its base in Tolyatti, Russia. Numerous video and

newspaper interviews given by the officers revealed that: they were so-called 'contracted' (kontraktniki) Special Forces of the GRU deployed to Ukraine on 6 March 2015 in the battalion numbering 220 soldiers; they were dispatched on orders from their superiors who promised double their usual pay; that on the day of their capture their unit, comprised entirely of Russian troops, was stationed near Lugansk and was spotted by the UAF during a reconnaissance mission, prompting a gunfire exchange. Against this evidence, Russia has not relented in its denials of the involvement of Russia's armed forces in the fighting in Donbass. In fact, on July 21, the Ministry of Defense of Russia declared that even though the two officers underwent military service in Russia, the events in Ukraine linked to them 'took place after their discharge from military service and were not connected to it.' On some accounts, the relatives of the accused have confirmed that the soldiers were indeed discharged. Consistent with this storyline, the LPR has maintained that Erofeev and Alexandrov are members of its own police force with no affiliation to the Russian armed forces.

There is little doubt today that either an international armed conflict (IAC) or a non-international armed conflict (NIAC) with a parallel IAC is taking place in Ukraine (for a more detailed discussion on the qualification of the conflict, see the Savchenko post). To get a clearer picture on what Ukraine should be doing with the captives as far as IHL is concerned, this post will briefly go through the different possible classifications of Erofeev and Aleksandrov under the IAC or the NIAC scenario.

Under IHL of IAC, members of the armed forces of Russia or Ukraine who fall into enemy hands are prisoners of war (POW) with combatants' immunity, meaning that they cannot be tried for direct participation in hostilities. Russia's refusal to recognize its own soldiers can only have a limited bearing on their POW status. As the Detaining Power, it is up to Ukraine to confirm the status of captured fighters, and if Russia's statements raised a doubt with respect to the veracity of the officers' POW claims, their status should have been determined by a competent tribunal pursuant to Article 5 Geneva Convention (GC) III and Article 45 of Additional Protocol (AP) I, to which both Ukraine and Russia are a party. Importantly, while such a determination is pending, captured combatants benefit from a POW presumption. If the competent tribunal had followed Kiev's official line, namely that Erofeev and Alexandrov were members of Russia's special forces at the time of their capture, they should have been deemed POWs. If, however, both were found to have been discharged by Russia in December 2014 and to have gone to Ukraine of their own accord, as Russia claims, several classifications were then possible.

First, if the two fighters fought alongside the armed forces of the LPR, and the rebel forces were under the 'overall' or 'effective control' of Russia, Erofeev and Aleksandrov could still be POWs as members of the non-state armed group 'belonging' to Russia under Article 4, GC III, so long as they fulfilled the relaxed conditions for POW status under Article 43, AP I. Under this scenario however, captured fighters of the LPR would likewise have to be accorded POW status, which Ukraine would understandably be reluctant to do because it considers the LPR to be a terrorist organization.

Secondly, if they do not fulfill the criteria for combatants under AP I, Erofeev and Aleksandrov could be deemed civilians directly participating in hostilities (DPH). Civilians DPH can be tried for taking a direct part in hostilities, but they are entitled to the protections provided for in GC IV and Article 75 AP I. A conscientious finder of fact would conclude that this classification is unlikely here, where both fighters were members of a well-organized armed force 'under a command' of a superior, 'subject to an internal disciplinary system', and carried arms openly just prior to their engagement with the UAF, as evidenced by the seizure of (Russian manufactured) arms from the officers upon their capture.

Thirdly, all the talk of kontraktniki evokes the involvement of mercenaries, individuals that directly participate in hostilities for remuneration who do not have the right to be a combatant or a POW. We can quickly dispense with this option since, according to Article 47, AP I, a mercenary cannot be a national of a party to the IAC in question.

Things are more straightforward in a NIAC scenario, save for the 'legality of detention in NIAC' conundrum, which will not be explored here. IHL of NIACs makes no reference to 'combatants' or POW status. Fighters of organized armed groups who engage in military operations against state forces are either civilians DPH, or, more controversially, individuals with a continuous combatant function. This differentiation is only important in targeting; members of both categories are liable under domestic law for actions that are normally legal under IHL, such as targeting a soldier of the belligerent state. Because they lack the combatants' privilege in a NIAC, both Erofeev and Aleksandrov could be prosecuted for domestic crimes merely for shooting at the UAF.

The conflict in Donbass is not, however, a NIAC. To begin with, President Poroshenko has repeatedly claimed that Ukraine's conflict is not a war with 'the separatists, which are supported by Russia. It is a real war with Russia'. He is right, which means that in the IAC between Ukraine and Russia members of the armed forces of both Ukraine and Russia who have fallen into the enemy's hands are POWs and are entitled to combatants' privilege. Indeed,

this remains Ukraine's claim with respect to Savchenko. But Ukraine has charged Erofeev and Aleksandrov with terrorism, without having first established the officers' status by a competent tribunal in violation of the POW presumption. This treatment can only be corollary to that of civilians DPH in an IAC or NIAC scenario, which contradicts Ukraine's unequivocal assertions that it is fighting an IAC with Russia and that Erofeev and Alexandrov are Russian special forces commandeered to Russia by the Kremlin, thereby implicitly accepting Russia's disavowal of its troops. To sum up, while Ukraine claims to be fighting a war with Russia, at the same time it wants to punish Russian soldiers fighting that war by prosecuting them for participating in a firefight with the UAF. This treatment is contrary to IHL (Art. 43(2), AP I).

Perhaps in a belated attempt to give an international, state-centric spin to this judicial exercise, Ukraine has added the charge of 'Planning, preparation and waging of an aggressive war' against both officers. Since Ukraine is not a party to the Rome Statute, and assuming that somehow a low-ranking officer is capable of planning or carrying out a war, Ukraine can technically prosecute even a POW for international crimes if this is provided for under domestic legislation. But the additional charge is not enough to remedy the ongoing IHL violations. If Ukraine is to win the support of the international legal community and bolster its arguments for, at the very least, the same treatment to be accorded to Savchenko, it would be well-advised to call a POW a POW, to drop the terrorism charges for direct participation in hostilities, as well as the dubious aggression charge, and to attempt an exchange of Erofeev and Aleksandrov for Savchenko and (an)other POW(s) held by Russia.

Armed Opposition Groups' Courts: Challenging the Lawfulness of Detentions in Light of the Serdar Mohammed Appeals Judgment

Just Security
By Ezequiel Heffes
September 2, 2015

> **Much has already been written on the authority to detain in non-international armed conflicts (NIACs). So much so, in fact, that it seems hard to find something new, not to mention useful, to say. However, there is at least one issue that was not analyzed by Justice Leggatt nor by the Court of Appeal in its recent Serdar Mohammed judgment, and which has a direct impact on the legal regulation of detentions in NIACs: the possible practice of detainees challenging their grounds of detention before the courts of armed opposition groups (AOGs).**
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> By affirming that the basis for deprivation of liberty is found in States' domestic laws, these decisions imply that an armed opposition groups, in principle, could never carry out those actions according to law. Their courts, in consequence, will never be able to demonstrate that the detention was not arbitrary.

Serdar Mohammed: No Authority for Detentions by AOGs in NIACs

A few weeks ago, the UK Court of Appeal upheld what the High Court of England and Wales decided last year, stating that international humanitarian law (IHL) does not provide legal power to detain in the context of NIACs. In this sense, the Court affirmed that

Despite that force, we have concluded that in its present stage of development it is not possible to find authority under international humanitarian law to detain in an internationalised non-international armed conflict by implication from the relevant treaty provisions, Common Article 3 and APII. As to customary international law [...] we do not consider that it is possible to base authority to detain in a non-international armed conflict on customary international law.

But what are the practical consequences of this view? It means that in a NIAC between a State and an armed opposition groups taking place in the territory of that State, only governmental authorities could potentially detain individuals for reasons related to the conflict and always under the applicable domestic legislation. IHL could only begin to apply after the detention has already begun, focusing on the treatment of the detainees. At first glance, such a situation seems logical since most (if not all) States would hardly recognize in any international framework the possibility that armed opposition groups, that are not under their control and in an armed struggle against them, would be able to exercise the exclusive power of a sovereign State within that same State's territory. When analyzed from a domestic law perspective, detentions by such groups in NIACs are generally contrary to national legislation, implying that their members remain at all times subject to criminal law and may be prosecuted for their breach. In fact, generally, armed opposition groups' mere existence is already contrary to these legal

frameworks.

Still, this situation does not exclude the application of IHL, and its separation from domestic law does not address certain questions. Mainly, there appears to be a "negative" relationship between the armed opposition groups' unlawful domestic character and the absence of an explicit possibility to detain or kill in IHL applicable in NIACs. In international armed conflicts (IACs), States have accepted these actions during hostilities, but in NIACs they do not seem prepared to accept that their own citizens can use certain legal authority against other citizens, a perfectly logical position. Ultimately, this issue derives from an equality problem. While in IACs States recognize themselves as equals and understand that leaving aside any consideration of the legality of the use of force all of them may detain on the basis of IHL, in NIACs there is a differentiation based on domestic law.

Yet, even from this perspective, some problematic issues may be raised. This is the case with respect to the possibility granted by IHL to armed opposition groups to set up courts respecting certain judicial guarantees, in particular the writ to habeas corpus.

The Legal Basis for AOG Courts

It is recognized that IHL creates equal obligations upon States and armed opposition groups. In the context of NIACs, they are bound by Common Article 3 (CA3) and Additional Protocol II (AP II) of the Geneva Conventions - taking into account AP II's more restricted scope of application - and by customary IHL. All of these sources contain specific provisions regarding the application of justice by armed opposition groups.

CA3 affirms that "the passing of sentences and the carrying out of executions without previous judgments pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized people" is prohibited with respect to persons taking no active part in the hostilities.

AP II develops and supplements CA3 without modifying its conditions of application. In this regard, Article 6 (2) complements CA3 by including several standards based on the more rigorous provisions of Geneva Convention III and Geneva Convention IV, and also from the International Covenant on Civil and Political Rights (ICCPR), particularly Article 15 (see here). As its commentary affirms, Article 6 (2) applies equally "to civilians and combatants who have fallen in the power of the adverse party and who may be subject to penal prosecution." This provision also requires that "[n]o sentences shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality." In addition, it affirms that a convicted person "shall be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised."

Both CA3 and AP II have a direct bearing on our inquiry: They unequivocally grant armed opposition groups the possibility to "regularly" constitute courts (or whatever body is entrusted to fulfill such judicial functions) and to "legislate" in order to meet the judicial guarantees component. The requirement for a fair trial in NIACs has also been affirmed by the ICRC Customary IHL Study. By recognizing this possibility, States have explicitly recognized armed opposition groups' legal capacity to run a parallel "non-state legislative" and judicial system outside of and independent from the State's regular authority.

Yet, IHL does not actually oblige armed opposition groups to set up courts. It merely regulates their creation and procedures if these non-state entities decide to convene them, which should be done while at the same time satisfying the above-mentioned fair trial guarantees. But certainly even if proper tribunals are not constituted, other quasi-judicial bodies can also carry out their functions so long as they respect the judicial guarantees included in CA3. This is related to the notion of administration of justice, which is a State function par excellence. Since armed opposition groups do not always reach a high degree of organization, they will not always have the capacity to fully implement judicial guarantees. The exception, clearly, would be armed opposition groups exercising long-term control over a territory, granting them the possibility to develop State-like institutions, including a judiciary. IHL, nevertheless, still binds these entities to respect certain safeguards in NIACs.

This scenario seems to follow what Professor of IHL Marco Sassòli, has called a "sliding scale of obligations." In his words, "[t]he better organized an armed group is and the more stable control over the territory it has" the more rules of IHL that would be applicable. One could expect from a highly organized armed opposition groups a higher degree of respect for international obligations with regards to fair trials guarantees. Nevertheless, a minimum "recognized as indispensable by civilized people" should always be respected.

Challenging the Lawfulness of Detention Before AOG Courts

Generally speaking, a prohibition on arbitrary detention may be derived of the judicial guarantees enshrined in

CA3. In fact, by making an explicit reference to international human rights law, Jean-Marie Henckaerts and Louise Doswald-Beck recognize in the ICRC Customary IHL Study that under the customary IHL of NIACs arbitrary deprivation of liberty is prohibited. They affirm that there should be a valid reason for the deprivation of liberty and that the following procedural requirements should be fulfilled: 1) an "[o]bligation to inform a person who is arrested of the reasons for arrest," 2) an "[o]bligation to bring a person arrested on a criminal charge promptly before a judge," and 3) an "[o]bligation to provide a person deprived of liberty with an opportunity to challenge the lawfulness of detention." As Sassòli and Laura Olson explain, the latter refers to the "so-called writ of habeas corpus."

All these elements are important in order to prevent indefinite detentions, and some of them have been included in different international instruments, such as the Turku Declaration (Articles 4 and 11), the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 32) and the Copenhagen Principles applicable in NIACs (Principle 12). Moreover, practice by armed opposition groups also includes similar provisions. For instance, in the courts established by the Liberation Tigers of Tamil Eelam of Sri Lanka, the writ of habeas corpus was actually confirmed as being fully applicable by the "legal chief" of that group. Also, certain special agreements concluded between armed opposition groups and States address this issue similarly (here for a further analysis). For instance, in the Comprehensive Agreement between Philippines and the National Democratic Front of the Philippines it was recognized not only that the requisites of the due process should be respected, but also that relatives and duly authorized representatives of a person deprived of liberty for reasons related to the armed conflict had a right to inquire about the reasons for the detention."

Indeed, one way in which judicial or other supervision of detention may be exercised is by means of a petition aimed at challenging the lawfulness of detention. According to ICRC Legal Division head Knut Dörmann, this is related to the right to be informed, and based on the Procedural Principles and Safeguards for Internment and Administrative Detention of the ICRC. While not being "explicitly provided for in NIAC, it can be seen as an element of the obligation of humane treatment applicable to internment in all situations of armed conflict." The ICRC, however, refers in that document to Article 9 (4) of the ICCPR. In any case, its objective is to ensure that the deprivation of liberty was carried out according to the grounds established by law. Logically, if States have accepted this state of affairs at least under CA3 - which is considered as the most basic and elementary considerations of humanity - and therefore armed opposition groups can declare on a person's guilt of innocence, or even permit the detained person to challenge his or her detention outside of the State's regular legal system, it should also follow that such groups can detain such individuals under the same legal framework. It would be paradoxical and counterintuitive indeed if armed opposition groups were able to afford persons judicial guarantees whilst in detention during a NIAC but were not permitted to detain them in the first place. To say that armed opposition groups must comply with the aforementioned provisions, but not allow them by the same legal framework to detain would clearly create a curious outcome.

In sum, if one adheres to the view that IHL does not govern such actions but that instead domestic law applies - as upheld by the Court of Appeal in Serdar Mohammed - then the judicial guarantees contained in CA3 or AP II are stripped of any practical effect. This is because if IHL is silent in a NIAC and under domestic law detentions by these non-state entities are always illegal, then a person challenging the detention by an armed opposition groups before the group's courts, would always be able to demonstrate that their detention was "arbitrary." In such circumstances the outcome is a foregone conclusion and there would be no need to hear any arguments based on the judicial guarantees explicitly provided by IHL. It makes no sense for States to have included judicial guarantees within the applicable law if persons detained by armed opposition groups never have the opportunity to call upon them, since their detention is always illegal right from the very beginning. Besides, the purpose of including judicial guarantees in IHL of NIACs serves to ensure that detainees are actually well-treated, regardless of whether the detention is lawful or not, something that should be decided by the body entrusted to fulfill judicial functions.

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International Justice Practice of the **Public International Law & Policy Group**
and the **Frederick K. Cox International Law Center** of
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and the **Open Society Institute**.

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