



# NEWSLETTER CRIMINOLOGY AND INTERNATIONAL CRIMES

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## EDITORIAL

I recently jumped into the 21<sup>st</sup> century by joining twitter, the main reason being that I want to be informed if something serious happens in Mali, or more specific in Bamako, where I live. Some examples. When some months ago a famous bar/restaurant in my neighbourhood was attacked,

leaving a couple of people dead and injured, twitter gave fast and accurate information, at least faster and more accurate than regular news providers. Already during the signing ceremony of the Peace Agreement in Bamako the first statements and pictures reached us through twitter. Twitter gives a rather clear picture of the situation in the north of Mali – Ségou, Mopti, Gao, Tombouctou (Kidal is a no-go area unfortunately) – which is helpful when you consider to go there. And if you want to have some updated information about crises elsewhere in the world where you have friends or other interests, such as Burundi, Yemen and South Sudan, there is twitter.

But the flipside of twitter is the overload of ‘easy opinions’ of people. Individuals or presidents alike who want to make known what they think or assume or suspect of some incident. People who assume that others are interested in their opinions. And after the first direct and helpful information, knowledge easily transforms into rumours. An attack becomes a personal revenge, someone ‘knows’, or a criminal settlement of scores, someone else ‘knows’, or a full blown terrorist event, as a third person is certain he ‘knows’.

In this volume of the newsletter you will find all but short and easy opinions, and we hope you agree with us. A long read about the Hissein Habré case that will soon start in Dakar, Senegal. It took a long time to get him in the dock. “This trial is Chad’s rendezvous with history”, according to Reed Brody, who was involved in this case from the start. More in general the trial is a litmus test for pan-African justice, as Thijs Bouwknecht writes. “In all, the most challenging task for the judges of this newbie court, is to separate facts from fictions, see through emotions and politics and rule on Habré’s culpability for the specific charges spelled out against him, based on the evidence and ‘beyond any reasonable doubt’. Only that will make the first ‘Pan-African’ trial a vitalising specimen for the future of (international) criminal justice after mass atrocity in Africa.”

And after this long read you may want to follow Thijs Bouwknecht on twitter @thijsbouwknecht to get informed about the Habré case on a daily basis.

Roelof Haveman

## AGENDA

**5-9 July 2015 International Symposium of the world society of victimology**, Perth, Australia. Deadline abstracts: 7 March 2015. More information:

<http://www.aic.gov.au/events/aic%20upcoming%20events/2015/wsv.html>

**8-12 July 2015 International Association of Genocide Scholars (IAGS)**, biennial conference, Yerevan, Armenia. Deadline submissions: 23 January 2015. Website:

<http://www.genocidescholars.org/news/twelfth-meeting-iags-july-8-12-2015-yerevan-armenia>

**20-31 July 2015 Aegis Rwanda** short course: Genocide and mass atrocities: actors, causes and responses to violence, Kigali, Rwanda

**2-5 September 2015 European Society of Criminology (ESC) Annual Conference**, in Porto, Portugal. More information:

<http://www.eurocrim2015.com/>

**7-9 October 2015 Rwanda Partnering in Global Legal Research Conference**, Kigali, Rwanda. For information send an email to dr. Alphonse Muleefu: [alpfong@yahoo.com](mailto:alpfong@yahoo.com) or:

<http://www.ur.ac.rw/?q=node/203>

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

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

## THE HAGUE NEWS XIV

By: **Barbora Hola**

As in every issue, this brief summary describes the most recent developments in international criminal justice in the legal capital of the world – the Hague. This time, the period between 1 December 2014 and 31 May 2015 is covered. During these six months, the ICTY and ICTR have finalized some of their last cases and the ICC experienced a rather turbulent period with terminating or suspending two of its pending cases against standing heads of States primarily (and not surprisingly) for a lack of State cooperation. Note: the article contains [hyperlinks](#) to supporting documents.

### 1. ICTY

On 30 January 2015 the ICTY delivered the appeals judgment in its largest case against five senior officials in the Army of Republika Srpska (VRS) for crimes perpetrated by Bosnian Serb soldiers during and after the Srebrenica massacre. **Vujadin Popovic**, a former Chief of Security of the Drina Corps, and **Ljubisa Beara**, a former Chief of Security in the Main Staff of the VRS, were convicted as participants in a joint criminal enterprise (JCE) of genocide, conspiracy to commit genocide, war crimes and crimes against humanity and sentenced to life. **Drago Nikolic**, who used to be a Chief of Security in the VRS Zvornik Brigade, was sentenced to 35 years for aiding and abetting genocide, crimes against humanity and war crimes through his participation in a JCE and **Radivoje Miletic**'s sentence for crimes against humanity and war crimes committed via a JCE was reduced to 18 years (he got 19 years on trial) due to a Trial Chamber's error in accepting as an aggravating factor his use of authority within the VRS. Miletic was at the time of the events a Chief of the Operations and Training Administration of the VRS Main Staff. The last defendant, **Vinko Pandurovic**, a Commander of the Zvornik Brigade, was found guilty of aiding and abetting and as a superior for crimes against humanity and war crimes and sent to prison for 13 years. In dismissing one of his grounds of appeal on aiding and abetting, the Appeals Chamber recalled that under customary law "specific direction" is not an element of this mode of liability (with three judges appending dissenting opinions). The Appeals Chamber modified (reversed but also added) the Trial Chamber's factual and legal findings regarding all defendants (for a commentary regarding the Chamber's argumentation with respect to the JCE and a necessary link to convict high ranking defendants of crimes perpetrated on the ground see [here](#)). In addition, appeals judges granted the Prosecution's appeal and convicted Popovic and Beara for conspiracy for genocide. This constitutes the first (final) conviction at the ICTY alleging a conspiracy to commit genocide in Srebrenica at the highest echelons of the Bosnian Serb army.

In April the Appeals Chamber finalized one more Srebrenica-related case with another high-ranking army official. It upheld **Zdravko Tolimir**'s conviction for genocide and his life sentence. During the war in Bosnia, Tolimir was a former Assistant Commander and Chief of the Sector for Intelligence and Security Affairs of the Main Staff of the VRS. The appeals judges confirmed Tolimir's convictions for genocide, conspiracy to commit genocide, extermination, murder, persecutions, and inhumane acts (forcible transfer), on the basis of Tolimir's participation in two JCEs:

(i) to murder the able-bodied men of Srebrenica and Zepa and (ii) to forcibly remove Bosnian Muslims from the same area. Some of Tolimir's convictions were partly reversed.

In total, the ICTY indicted 20 individuals for crimes committed in Srebrenica and Zepa and trials have been completed for 16 of them, while some individuals at the highest political and military posts in Republika Srpska and Serbia during the Bosnian conflict, such as Karadzic, Mladic, Stanisic and Simatovic, are still awaiting their (final) judgments.

## 2. *ICTR*

In December the Appeals Chamber of the Residual Mechanism for International Tribunals delivered its first appeals judgment and partially affirmed convictions against **Augustin Ngirabatware**, a former Minister of Planning in the Rwandan government during the genocide. Ngirabatware's conviction, under the extended form of joint criminal enterprise, of rape as a crime against humanity based on the rape of a Tutsi woman by members of the Interahamwe was reversed on appeal and his original sentence of 35 years was reduced to 30 years imprisonment. The appeals judges affirmed his conviction for incitement to commit genocide based on his speech at one roadblock and instigating and aiding and abetting genocide for his role in distributing weapons and other statements in Nyamyumba commune.

In the only and last case now pending before the ICTR Appeals Chamber against six accused including the first woman convicted of genocide by an international criminal tribunal, **Pauline Nyiramasuhuko**, a former Minister of Family and Women's Development in Rwanda, the ICTR Appeals Chamber heard oral arguments of the parties in April and the appeals judgment is expected to be delivered in November this year.

## 3. *ICC*

### *Uganda*

Almost ten years after the ICC issued his arrest warrant for crimes against humanity and war crimes, in January this year, **Dominic Ongwen**, a former child soldier who rose in the ranks of the notorious rebel group in Uganda – Lord's Resistance Army (LRA) – and became one of its commanders, surrendered to the US forces in the Central African Republic and was transferred to the ICC custody. In March, upon the request of the Prosecutor, the confirmation of charges hearing was set to 21 January 2016 in order to give the Prosecutor time to prepare adequately and re-investigate some of the allegations and contact

witnesses who had been interviewed more than a decade ago, eventually enlarge the factual basis of the case but also fulfil its disclosure obligations. Ongwen's case raises many interesting questions regarding his victim/perpetrator status and a degree of agency and responsibility in such complex cases.

### *Democratic Republic of Congo*

In February the ICC Appeals Chamber finalized the third case in the ICC's almost 13-year history, and, by majority, confirmed the acquittal of **Ngudjolo Chui**, a former leader of the National Integrationist Front who was in 2012 acquitted on trial of charges relating to his role in the attack on the village of Bogoro in Ituri District in the DRC. The majority dismissed all the Prosecutor's grounds of appeal that concerned the application of 'beyond any reasonable doubt' standard and other evidence assessment-related issues, including allegations of witness tampering. Two judges filed a dissenting opinion and argued that the case should have been re-tried. The acquittal decision was followed by a chain of events, that highlighted yet another problematic issue with the international criminal justice system: the problematic and as of yet unresolved position of the acquitted individuals, who (claim that they) cannot return to their home countries due to risks for their safety. One can only look at the situation of individuals acquitted by the ICTR, who have been for years or even decades "stuck" at the UN paid-for safe house in Tanzania with no legal status and no country to go to. Chui's situation in this sense raises the same problematic issues, with the exception that the Netherlands actually took much more pro-active stance than Tanzania and deported Chui back to the DRC. Immediately after the ICC appeals decision was rendered, Chui was transferred to Schiphol airport by Dutch authorities to be flown back to the DRC. However, after boarding the plane he was taken out of the aircraft pending yet another attempt by his lawyers to prevent his deportation (Chui's first asylum application was rejected by the Netherlands in 2012). Since his acquittal on trial Chui has been claiming that he would be at risk upon return to the DRC given his statements during his trial implicating the DRC government in the attack on Bogoro village. The Dutch authorities, however, have never accepted these allegations and also this time his application for asylum was rejected (for the second time). In May Chui was deported to the DRC. For a detailed commentary on the Chui's asylum claims saga and the role of the ICC therein see [here](#).

In the case against **Bosco Ntaganda**, Trial Chamber VI postponed the opening of the trial originally set to start in June. The trial against Ntaganda is now to begin in the second or third week of July with the exact date to be announced in a due course. In an

unprecedented move, the Chamber recommended that it would be in “the interest of justice” to hold the opening statements in Bunia, the DRC, and thus bring “international criminal justice” closer to the affected communities. Currently the ICC Presidency is holding consultation with the authorities of the DRC as to practical feasibility of the recommendation and the decision, whether indeed Ntaganda is going to hear the opening statements of his trial back in Congo, has not been made public yet.

In March 2015, the ICC Appeals Chamber in the **Lubanga** case issued a decision amending the victims’ reparations order delivered on trial in August 2012. In its decision the Appeals Chamber outlined principles and minimum elements required of a reparation order emphasizing the principles of fairness and equality in awarding reparations. According to the appeals judges reparation programmes should be based on gender-inclusive approach and include reintegration measures, together with general rehabilitation and practical measures such as housing, education and training, for former child soldiers to address their victimisation, discrimination and stigmatisation. Given the number of victims of Lubanga’s crimes, the Trial Chamber did not err in awarding reparations exclusively on a collective basis. All victims, irrespective of their participation in trial or the fact whether they filed an individual request for reparations, together with members of their communities and families, should be able to take part in reparation programmes (if they meet criteria of eligibility). The Trust Fund for Victims should submit the draft implementation plan for collective reparation awards to trial judges in no more than 6 month also implementing consultations regarding the design and nature of collective reparations conducted with victims, who participated at trial and filed individual requests for reparations. The plan should also include a budget estimate that would be necessary to remedy the harm caused by crimes committed by Lubanga. Since Lubanga was not convicted of crimes of sexual violence, the harm suffered by victims of sexual violence should not be included in this monetary amount (as correctly argued by the Trial Chamber). In addition, the Appeals Chamber reasoned that the trial judges erred in not making Lubanga personally liable for the collective reparations (due to his indigence) and argued that the personal liability of the convicted individual should be established in the order. If a convict is unable to finance the implementation of the order, the Trust Fund for Victims could use its resources and claim it back from the defendant at a later stage. For a discussion on the effectiveness and appropriateness of collective reparations measures in the context of DRC context see [here](#).

#### *Republic of Kenya*

As reported in the last issue, the Prosecutor in the case against **Uhuru Kenyatta** asked judges to indefinitely adjourn the case. Judges, however, were not willing to further adjourn the trial and in December 2014 the OTP thus decided to terminate the case against the Kenyan President. The Prosecutor withdrew the charges against Kenyatta due to a lack of evidence, in particular death or intimidation of several witnesses, a change of crucial elements of testimonies of some key witnesses and non-cooperation of the Kenyan government. The Prosecutor in her statement, however, emphasised a possibility of reopening of the case, should additional evidence occur. In March 2015 the Trial Chamber V(B) terminated the proceedings against Kenyatta. The Kenyatta proceedings clearly demonstrate the extreme difficulties and sensitivity of trying to prosecute a sitting head of state at the ICC. Similarly, two weeks after announcing the withdrawal of charges against Kenyatta, the Prosecutor “shelved” the investigations against the second president in office in the Darfur situation.

#### *Darfur, Sudan*

In December 2014 the ICC prosecutor has informed the UN Security Council that she will not conduct any further investigations in the Darfur situation and put (also) the case against the Sudanese sitting head of state, **Omar Al Bashir**, “on hold”. The reason for this decision, as presented by Bensouda, is the Council’s own failure to act on securing the arrest of the suspects, a lack of States cooperation and generally unfavourable political situation to conduct an effective investigation.

#### *Central African Republic*

At the end of May Trial Chamber VII set the date for the opening of the trial in the case concerning offenses against the administration of justice allegedly committed during the trial of Bemba by **Jean Pierre Bemba** himself and four co-accused: **Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido**. The trial is to open on 29 September 2015. The offences they are charged with include corruptly influencing witnesses by giving them money and instructions to provide false testimony, presenting false evidence and giving false testimony in the courtroom.

#### *Côte d’Ivoire*

On 11 December 2014, Pre-Trial Chamber I confirmed four charges of crimes against humanity against **Charles Blé Goudé**, the third ICC suspect in the situation in Côte d’Ivoire next to the former President Gbagbo and his wife Simone. According to the ICC press release “[t]he Chamber thoroughly examined all the evidence submitted to it by the

parties, which included more than 40,000 pages of documentary evidence, including statements by 134 witnesses, and more than 1200 items of audio and video material” and committed Goudé to trial on charges of murder, rape, other inhuman acts (or alternatively attempted murder) and persecution committed in Abidjan between 16 December 2010 and on or around 12 April 2011. In March 2015 upon the request of the Prosecutor the case against Ble Goudé was joined with the case against **Laurent Gbagbo** “in order to ensure the efficacy and expeditiousness of the proceedings” as the charges against both accused stem from the same incidents involving the same direct perpetrators who targeted supporters of Ouattara and the Prosecutor relies on largely similar evidence. The trial of Gbagbo was originally set to start in July but given this development the starting date was postponed to 10 November 2015.

In the case against Gbagbo’s wife Simone Pre-Trial Chamber I rejected the challenge to the admissibility of her case lodged by Côte d’Ivoire and requested Simone’s surrender in December 2014. The Chamber noted that Ivorian authorities “were not taking tangible, concrete and progressive steps” to investigate and prosecute whether **Simone Gbagbo** is responsible for the same conduct that is alleged in the case before the ICC. Meanwhile in March Simone was convicted by domestic courts in Côte d’Ivoire of among others “disturbing peace, forming and organizing criminal gangs and undermining state security” for her conduct during the post-election crisis in 2011 and sentenced to 20 years imprisonment. On 27 May 2015 the Appeals Chamber, however, confirmed the admissibility decision of the Pre-Trial Chamber. With respect to the nature of the crimes Gbagbo was prosecuted for domestically, i.e. economic crimes and crimes against the State, the Appeals Chamber concluded that “it was not unreasonable for the Chamber to find this conduct to be of a different nature to Ms Simone Gbagbo’s conduct, as alleged before the ICC, in relation to the crimes against humanity of murder, rape and other forms of sexual violence, persecution and other inhumane acts”. This complementarity struggle illustrates the strict and some would argue very formalistic interpretation of “the substantially same conduct test” underlying the ICC application of complementarity principle.

#### *Palestine*

On 1 April Palestine became the 123<sup>rd</sup> State to ratify the Rome Statute and become a member of “the ICC system of justice”. In January, the ICC was mandated by a unilateral declaration of Palestine to have a jurisdiction over crimes committed since 13 June 2014 and the Prosecutor announced that she is opening a preliminary examination into the situation of Palestine. As

reported in one of the previous issues, Palestine already in 2009 attempted to trigger the Court’s jurisdiction regarding crimes allegedly committed during the Operation Cast Lead in Gaza. However, back in the time the Prosecutor rejected to act upon the request arguing that Palestine does not constitute “a State” under the Rome Statute. In between, Palestine acquired a non-member observer State status at the UN (upgraded from non-State observer) The Palestinian accession to the ICC Statute met with opposition of many powerful states, such as the [USA](#) or [Israel](#), reignited the old “peace versus justice” discussion and sparked attention of many commentators. For an insightful symposium on the effects of the ICC membership on Israeli-Palestinian conflict see [here](#).

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

## A LONG READ

### **Chad – Dakar: Extraordinary Habré trial is litmus test for Pan-African justice**

**By Thijs Bouwknecht**

*Note: the article contains [hyperlinks](#) to supporting documents.*

From 20 July onwards, Chad’s previous despot, Hissène Habré, will be in the dock on charges of crimes against humanity, torture and war crimes before the Extraordinary African Chambers (EAC) in the Senegalese court system. His trial will be Africa’s first to proceed to trial under the guise of universal jurisdiction – the principle that international crimes have no borders. Its decisive start signals a judicial *rendez-vous* with the ghosts of Chad’s brutal past and will bring to a close a protracted legal drama, meandering through a myriad of jurisdictions. Next to being a catalysing forum for witness testimony, the Habré trial will above all be a litmus test for ‘Pan-African’ justice.

#### *Glacial venture*

“Je ne reconnais pas les faits qui me sont reprochés. Je n’ai jamais commis de tels actes.” A scarce verse of renunciation was the single [utterance](#) Hissène (also spelled Hissène) Habré wished to share with his litigant, Demba Kandji. It was late afternoon, 3 February 2000. In a courtroom in Dakar’s Regional Court, the Senegalese Investigating Judge had just charged Habré as an accessory to torture and crimes against humanity and placed him under virtual house arrest. Hopes for justice were rising among

seven Chadians who – in the days before – had testified before Kandji about political killings, torment, disappearances and arbitrary arrests under their former President's repressive rule. Kandji had moved fast, fearing Habré's flight. The Senegalese magistrate had summoned the survivors to recount their plights during two days of closed-door hearings. Only two days after the Chadians, supported by international human rights groups, had filed a criminal complaint against Habré for his "barbarous acts". Finally, hearings for historic atrocity seemed to set on the horizon. But attaining universal justice for old crimes is a glacial venture. It demands uncompromising determination, a long and deep breath. But above all, it requires endless patience: another fifteen-and-a-half years in the case of Habré.

Timing and venue had appeared to be perfect to pursue the "Desert Fox" into the legal hole. A spirit of international justice filled the air in the late 1990s. Balkan war criminals and Rwandan *génocidaires* were being served judgements at the UN's *ad hoc* tribunals (ICTY & ICTR) in The Hague and Arusha. In Rome, in July 1998, 120 states endorsed the conception of the International Criminal Court (ICC), the world's first permanent court to pursue supposed criminals against humanity. Only a couple of months later, in London Bridge Hospital, the former Chilean martinet Augusto Pinochet Ugarte was detained, based on a Spanish arrest warrant listing 95 counts of torture. Senegal seemed an arena of imminent opportunity. The West African nation had championed in subscribing to international law and human rights treaties. In February 1999, Dakar was the debutant state to ratify the *Rome Statute*. Back in 1985 it was among the first countries to sign the UN's Convention Against Torture, well ahead of a clique of western establishments. There was no better place to test the waters of universal jurisdiction than coastal Senegal. Its guinea pig was the exiled Habré, who lived in Dakar since 1990, owning two mansions in the Ouakam and Mamelles neighbourhoods.

But the tide was ebbing. Politics eroded justice and Habré, who was soon dubbed "Africa's Pinochet", was manoeuvred back into luxurious impunity, just like the Chilean General. The gruesome victims' testimonies about torture in Habré's secret prisons – including "Arbatachar", in which a prisoner's arms and legs were tied together behind the back – and how they had been forced to dig mass graves to bury Habré's opponents, rapidly eclipsed during Senegal's hotly contested elections. While the zealous Kandji had started hearing further witnesses and was anticipating to amass more testimony and evidence in Chad, Dakar's appeals panels ruled out jurisdiction over the more than a decade old crimes,

perpetrated roughly 4.500 kilometres away. A month later, Abdoulaye Wade, took office as Senegal's new President. But one of his closest judicial advisors was Madické Niang, who also happened to be Habré's lawyer. In June, Judge Demba Kandji was detached from the Habré investigation, followed by further dubious reshufflings in the judiciary. Flexibly framed legal reasoning shipwrecked the case at Senegal's highest court, the *Cour de Cassation*, on 20 March 2001. Habré's prosecution in Senegal was played out: his tormenting phantoms were chased out of the courtrooms and footnoted into the annals history.

#### *Itinerary into Chad's gloomy past.*

Current President Idriss Déby Itno unseated Habré in December 1990, ending an eight-year saga of state repression, political assassinations, ethnic strife and deadly persecution of southerners, Chadian Arabs, the Hadjerai and the Zaghawa. Three hundred political prisoners were reportedly assassinated before Habré escaped to Senegal, via Cameroon, reportedly with his bags filled with the former French colony's entire treasury. In return he left behind a catalogue of horror with its traces registered in his own secret archives of tyranny. Human Rights Watch (HRW) advocates rediscovered them in 2001. Strewn on the timeworn floors at the former headquarters of the *Direction de la Documentation et de la Sécurité* (DDS) lay some 49.000 documents including old magazines, photographs, radio transcripts and official state files and memoranda. Among the records of Habré's dreaded Gestapo-like secret police service were also prisoner lists, arrest and interrogation reports, death certificates and spying reports – a virtual itinerary into Chad's gloomy past. Puzzled together, they knit the threads of clandestine prisons and torture cells that were the tapestry of Habré's police state, including its emblematic *Piscine*; an old colonial swimming pool transformed into an oubliette holding 10 cells, right next door to the USAID office in central N'Djamena.

As the doors of these torture chambers swung open after Habré's ousting in 1990, hundreds of political prisoners were freed; the *Piscine* and other buildings were left abandoned. Thirteen months later, after some hasty reconstruction work, prosecutor Mohamat Hassan Abakar set up office in the loathsome DDS main offices. His truth commission *avant la lettre* was to investigate "crimes and misappropriations" by Habré and his inner circles. Abakar's investigators stumbled upon the detailed reports of executions, destruction of villages and a massacre in the DDS files. And over the next 17 months, they exhumed three mass gravesites and collected 1726 witness statements of former detainees, victims' relatives, prisoners of

war, DDS agents and senior officials. From these sources, the commission counted some 54.000 detainees in Habré's prisons and 3.806 people dead. It loosely extrapolated that the total casualty number of what it regarded a 'veritable genocide' and crimes against humanity between 1982 and 1990 could reach up to 40.000 deaths. Besides naming the 14 most notorious torturers and publishing their pictures, the Commission of Inquiry revealed in its report that the United States of America (USA) was the principal supplier of financial, military and technical aid to the DDS and Habré, maintaining an anti-terrorist bulwark against Libya's Muammar Gaddafi. But Deby's government – of which many officials and the president himself were involved in Habré's misdeeds – did not pursue any justice and even locked away the truth commission's records.

### *Universal jurisdiction*

The solid truth commission account, alongside a report by a French medical team, which treated 581 torture victims in the mid-1980s, composed the documentary core of what became the first step in what has been portrayed by observers as an "interminable political and legal soap opera – one that requires tabulated chronologies to navigate the labyrinths of international law," starting in Judge Demba Kandji's Senegalese chamber. It was supported by the invaluable witness testimonies treasured by one of the plaintiffs, Souleymane Guengueng. Walking out of prison in December 1990, the former accountant became a free man but looked like a skeleton (on his own account), shattered by his own distressed three-year captivity and witnessing hundreds fellow inmates perish from brutality, ill-treatment and malady. Throughout his imprisonment he swore to himself to fight for justice. In the immediate years following Habré's downfall he accrued 792 witness accounts from fellow survivors. The accounts, which he hid underneath his mud-brick house for years, detailed 97 political killings, 142 cases of torture, 100 "disappearances" and 736 arbitrary arrests, most carried out by the DDS. But Guengueng's optimism for justice in Senegal was short-lived. Nevertheless his perseverance outlasted despair. A little more than a year after the case was dropped, Guengueng was back in his old jails, exhibiting them for a Belgian judge.

From the early 2000's, civil complaints about serious human rights abuses had been piling up in the offices of a special investigative unit at the *arrondissement judiciaire Bruxelles*. Belgium's 1993 broad but internationally controversial universal jurisdiction law – or the genocide law in local parlance – permitted judges to look into allegations of international crimes outside of its

borders. The list quickly swelled: Rwanda, Israel, Palestine, Burma, China, Cambodia, Guatemala, Congo (Brazzaville), Iran, Chile, Cuba, Iraq, Côte d'Ivoire, Central African Republic, Mauritania. Brussels became pivotal in the Habré case. Daniel Fransen, one of the investigating magistrates, received a first complaint late November 2000, filed by a Belgian citizen of Chadian descent. Two dozen comparable civil-party applications followed in the subsequent months. Fransen found that the acts complained of – extermination, torture, persecution and enforced disappearances – could be characterised as "crimes against humanity" and travelled with a prosecutor, four police officers and a court clerk to Chad on 26 February 2001. Armed with computers, camcorders, camera's and police equipment, he met with the 54-year old Guengueng and other witnesses who had lined up for hours to tell their stories. They took the Belgian team to their old prisons, gravesites and to the DDS archives. On returning on 8 March, Fransen took the copies of Habré's political police, received the disclosed truth commission dossiers and compiled 27 binder files of evidence.

After a four-and-a-half-year review of the material, Judge Fransen issued an international arrest warrant *in absentia* for Habré in September 2005. He charged the former President as the perpetrator or co-perpetrator of "serious violations of international humanitarian law, torture, genocide, crimes against humanity and war crimes." But instead of extraditing Habré, Senegal set in motion a further legal rollercoaster. President Wade took the matter into his own hands and addressed it to the African Union (AU), which after mounting pressure from the European Union and a ruling by the UN Committee against Torture requested Senegal to prosecute Habré "on behalf of Africa." From 2007, Dakar grudgingly prepared for trial, reconfiguring its laws, lobbying with donors, amending the constitution and reviewing fourteen new victim complaints. So the wheels of justice were grinding, but the political will was against the grain, still. A surprise judgement emerged in Chad in August 2008: Chad convicted and sentenced Habré to death *in absentia* for allegedly helping Sudanese-backed rebels, who tried to overthrow Déby in 2008. Senegal's Justice Minister – who was closely connected to Habré's defence – was quick to state that with this judgement he can no longer be tried in any other jurisdiction.

### *Extraordinary – 'Pan-African' justice*

Frustrated by Wade's covert and overt endeavours to thwart or derail a prosecution of Habré, Belgium in 2009 sought an order from the UN's highest tribunal – the International Court of Justice (ICJ) – to order Senegal to try Habré or to extradite him,

based on Fransen's warrant. The chorus of pressure was then joined by yet another court, a year later. This time the Court of Justice of the Economic Community of West African States (ECOWAS) ruled that Habré should be tried before a "special *ad hoc* procedure of an international character." In response, the African Union proposed a plan for special chambers within the Senegalese justice system with some foreign judges on the bench. But again, Wade's administration ruled out holding Habré's trial in Senegal. When Macky Sall was elected president in 2012, however, the table was turned and progress towards a trial snowballed. Sall quickly answered to the ICJ's instruction to prosecute Habré "without further delay" if it did not extradite him; within half a year, he agreed with the AU to set up the Extraordinary African Chambers (EAC) in August 2012.

Similar to the ICC, the international criminal tribunals and countries with broad universal jurisdiction laws, the extraordinary chambers have jurisdiction over the international crimes of genocide, crimes against humanity, war crimes and torture. Its temporal focus is historic and covers the exact period of Habré's rule – stretching between 7 June 1982 and 1 December 1990 – while its geographical scope is limited to Chad. Inaugurated in February 2013 and structured within the existing Senegalese court system, the EAC have four levels: an Investigative Chamber with four Senegalese investigative judges, an Indicting Chamber of three Senegalese judges, a Trial Chamber and an Appeals Chamber. The Trial Chamber and the Appeals Chamber each have two Senegalese judges and a president from another African country. Mbacké Fall was appointed Prosecutor. On Mbacké's request, Habré – alongside 5 other Chadians – was indicted on 2 July 2013. The former president was put in pre-trial detention while the court issued international arrest warrants for the others.

Investigations were launched immediately. Belgium transmitted its binders to Dakar and the judges took copies of the DDS files that HRW unveiled in 2001. They were a springboard from where the investigative judges commenced their thorough 19-month inquiry, including four 'rogatory' missions to Chad. Mohamat Hassan Abakar, the truth commissions' president, was one of the first witnesses interviewed. His statement adds up to the 2500 testimonies that were gathered from a range of Chadians: direct and indirect victims and key witnesses, including former officials of the Habré government. A notorious DDS agent, Bandjim Bandoum, testified for two days in France in early 2014. Experts were appointed to conduct data analysis, decipher Habré's handwriting on communications, detail the historical context of his rule and outline the functioning and command

structure of the military. On the ground, the Argentine Forensic Anthropology Team carried out exhumations at mass grave sites, locating and uncovering bodies of people killed in massacres. Altogether, the fact-finding judges found they had sufficient evidence for Habré to face charges of crimes against humanity and torture as a member of a "joint criminal enterprise" and of war crimes on the basis of his superior responsibility. Specifically, in a detailed 196-page indictment, Habré was charged with: (1) the systematic practice of murder, summary executions, kidnapping followed by enforced disappearance and torture, amounting to crimes against humanity, against the Hadjerai and Zaghawa ethnic groups, the people of southern Chad and political opponents; (2) torture; and (3) the war crimes of murder, torture, unlawful transfer and unlawful confinement, and violence to life and physical well-being.

Habré's co-accused - Saleh Younous, Guihini Korei, Abakar Torbo, Mahamat Djibrine, and Zakaria Berdei – remain outside the reach of the EAC. In March this year, Younous and Djibrine, alongside 18 other former Habré-era officials, were convicted in Chad on charges of murder, torture, kidnapping and arbitrary detention, based on complaints filed by victims. Berdei is also believed to be in Chad, though he is not in custody. Torbo and Korei's whereabouts are currently unknown. Habré will thus stand trial alone. Contrasting the years that it took to bring him to the dock, the trial, which will be publicly broadcasted in Senegal and Chad, will be relatively short; it is scheduled to be finalised in seven months, including writing and delivering a judgement. Presiding judge Bgerdao Gustave Kam from Burkina Faso (who formerly worked at the ICTR) and his two Senegalese colleagues – Amady Diouf and Moustapha Ba – will spend extensive time examining the 100 witnesses who are lined up to testify in Dakar.

#### *Rendez-vous with history*

Victims, who have spearheaded and lobbied for Habré's prosecution from the start, will be represented by their lawyers, but only a small number will have a forum to relate their traumatic experiences. "I want to look Hissène Habré in the face and ask him why I was kept rotting in jail for three years, why my friends were tortured and killed," said Souleymane Guengueng. Jacqueline Moudeina, a Chadian civil parties lawyer, who has been spearheading the victims' case against Habré since 2000, wrote that when she found herself facing Habré, alongside two victims and in front of the investigating magistrates for a confrontational hearing during the investigations, she "took full measure of my role as giving a voice to these innumerable people who do not have one."

“This trial is Chad’s *rendezvous* with history,” commented HRW’s Reed Brody: “For the first time, after 24 years, victims are getting their day in court as the abuses of the Habré government are being presented for all to hear.” True, the inquisitorial style of the proceedings will catalyse unique *vive voce* historical narratives, revelations and confessions *about* atrocities committed in the 1980s. Yet, they are not testimonies *from* the past; the histories being told and written in Dakar will be in retrospect, enticed by judges, prosecutors, victims’ representatives and defence lawyers and perceived through the lens of judicial proceedings. Moreover, trials can prove to be uncomfortable platforms for confronting the past. As evidenced by his [website](#), Habré, who has always denied any wrongdoing and protested against his prosecution, is keen to introduce a counter-narrative.

Also, we only get to know Habré as a suspect in the courtroom and prisoner in his cell, not in his alleged criminal state, ruling Chad two decades ago; in the way his victims would remember him. Media-shy, the only image of the now 73-years old Habré has transpired in court documents. The investigating judges profiled Habré in their inquiry as a calm, courteous and helpful family man, married to two wives and father to six children and an adopted son. A devote Muslim, he spends his prison days reading the Quran, walking and seeing his family and lawyers. His jail life reveals a pious and spiritual personality, yet, observed an expert, he manifests an oversized ego. Before his judges he will play down his acts and mute their impressions in order to appear a plain, colourless and ‘ordinary man’, centrifuged through the machinery of international justice. In all, the most challenging task for the judges of this newbie court, is to separate facts from fictions, see through emotions and politics and rule on Habré’s culpability for the specific charges spelled out against him, based on the evidence and ‘beyond any reasonable doubt’. Only that will make the first ‘Pan-African’ trial a vitalising specimen for the future of (international) criminal justice after mass atrocity in Africa.

## SHORT ARTICLES

### ISIS, The Ezidis, and the Question of Genocide in Iraq<sup>1</sup>

By Kjell Anderson

The Êzîdîs<sup>2</sup> have long lived on the margins. This life on the edge is a product of both their relatively

small numbers and their distinctive cosmology. Such minority marginality has made the Êzîdîs perennial victims at the hands of the more powerful ethno-religious groups that surround them. In fact, Êzîdîs’ oral history holds that they have suffered 73 Fermāns<sup>3</sup> (“massacres”) throughout their history. The rise of the Islamic State in Iraq and Sham (ISIS; or Islamic State, IS) has heralded a new age of Êzîdî victimization. The 74th Fermān is underway. It is characterized by a systematic policy aimed at the destruction of Êzîdîs’ collective and individual existence through massacres, ethnic cleansing, sexual violence, mass enslavement, and forced conversion.

In this commentary I will discuss the question of ISIS’ intent to destroy the Yazidis on the basis of their ideology and acts on the ground. The violence will also be assessed in terms of the objective and subjective elements of the crime of genocide. Does the current violence amount to genocide in terms of the pattern of attacks and the intention of the perpetrators?

Self-sacrifice and the sacrifice of the “infidel” or “idolater” are endemic to the Islamic State’s universal mission. The implementation of the ‘law of God on earth’ requires the destruction of the damned, the unworthy population as an act of purification and sacrifice. These actions as materialized forms of the “law of God” classify and divide the world on a binary basis into the faithful/idolater, absolute truth/complete falsehood, divine punishment/reward, law of God/human-made law, and so on. Since it is “Allāh” who is responsible for the creation of these dichotomies no human on earth is allowed to ask why, or to question obedience to the Islamic State.

Destructive violence in such a worldview is self-justifying. In this ‘abode of war’ the destruction of enemies gives purpose to the movement and fortifies ‘just world’ thinking about the wickedness of the Islamic states’ enemies.

In the case of the Islamic State and the Êzîdîs we can draw from both the contextual evidence (i.e. the systematic targeting of Êzîdîs specifically) and the direct statements of Islamic state with regards to its intentions for the Êzîdîs group. These statements are found in official ISIS publications, notably Dābiq. In this context, not only are Êzîdîs historical accounts of consecutive attempts at extermination brushed aside, but also their “continual existence” is stressed as an unanswered question. Therefore the Islamic State tasks its Shari’a students and

<sup>1</sup> This short piece is extracted from a longer article co-authored with Fazil Moradi. The longer article includes interviews with victims and perpetrators.

<sup>2</sup> Êzîdîs (“the worshiper of Peacock Angel”) are commonly referred to as Yazidis both inside and outside of Iraq. Although

“Yazidi” is inscribed in their Iraqi national identity cards, Êzîdî is the term used by the population as a representative name for their religious identity.

<sup>3</sup> The word Fermān literally means order, but in the context of Êzîdîs it is translated as “Order of extermination.”

fuqahā' with the divine responsibility to identify, classify, calculate forms of punishment, and immediately determine the current and future existence of Êzîdîs.

Êzîdîs have come to symbolize heresy, thus their destruction is not only divinely acceptable but also desirable. This symbolic attractiveness becomes an organizing principle for violence, motivating the targeting of specific categories of victims (namely all Ezidîs).

The vulnerability of the Êzîdîs to social and systematic violence is rooted in the denial of their rights as a distinct religious minority and in criminogenic conditions on the ground. These conditions facilitate victimization through the absence of guardianship, target attractiveness, and exposure of Êzîdîs, as well as the presence of motivated perpetrators.<sup>4</sup> The collective dimension of genocide is represented in genocidal intent, which effectively binds individual victimization to the collective context. The identification of Yazidîs as idolators makes them suitable victims for the cadres of the Islamic State.

The criminal acts committed by ISIS against the Êzîdîs constitute all of the objective elements of the crime of genocide. Moreover, additional acts, such as the destruction of religious and cultural sites, are indicative of the presence of genocidal intent. The collective and organized nature of the violence demonstrates that it goes beyond excesses committed by individuals; rather it represents an organizational policy and pattern of similar attacks (as required for crimes against humanity and genocide, respectively, under the Elements of Crimes of the Rome Statute for the International Criminal Court).

This pattern of attacks is constituted on the basis of religious and ethnic identity. As a coordinated plan the operations divided the population by location, gender and age. In most cases the violence unfolded in a similar manner, beginning with an order to convert to Islam or face dire consequences. Upon the order to convert, with only two-three days' notice in some villages, community after community was emptied of its Êzîdî population.

The extermination of Êzîdîs functions as a form of Islamic ordering. Their violent transformation into

slavery and death will bring about their total destruction, an act seen by the Islamic state not as a process of creation but rather the birth of a new caliphate – God's kingdom on earth, populated by the devout – God's people. The totality of Êzîdîs loss is self-evident. A middle-aged woman living with 136 other Êzîdîs, most of them children, inside a tent located inside a private garden, at the outskirts of Sūlaimanî in the Kurdistan region said: "It is all gone. What my parents, grandparents, great-grand parents and I had and did is gone."

## A Letter from ... the Netherlands

### How an article on female perpetrators made me caught up in a media-hype

By Alette Smeulers

I have been doing research on perpetrators of international crimes for more than twenty years now and have published many articles on this topic. And yes I have been interviewed a few times – been on television once but nothing prepared me for the media hype that was unleashed by my article on [female perpetrators of international crimes](#). After the publications of the first interview related to this research in one of the major Dutch newspapers, I was interviewed almost 20 times in a time period of a few days – which more or less equals the number of times I have been interviewed so far my almost 20-year long academic career. The media attention caught me by surprise and made me wonder why this article attracted so much media attention.

In my article I conducted a literature survey to assess to what extent women are involved in mass atrocities. My aim was to understand why so many more men than women were involved in mass atrocities and whether or not this showed that women are less capable of committing mass atrocities than men. I first of all found that throughout history many more women have been involved in mass atrocities than we have generally assumed so far and that these women have been involved in all kinds of atrocities. During periods of mass violence most women were involved in administrative and supporting roles such as amongst others traitors, thieves or cheerleaders. A smaller but still significant number of women have however been more actively involved as prison guards, interrogators, torturers, murderers and even as sex-offenders. A small number of women have been leaders and instigators to mass atrocities. Four of them have been indicted by the international criminal courts and tribunals (Biljana Plavsic, Pauline Nyiramasuhuko, Ieng Thirith and Simone Gbagbo). They were all very powerful and influential women. The first two have already been convicted and sentenced to respectively 11 years and life imprisonment, the latter two were both

<sup>4</sup> This assessment of victim vulnerability is based on a modified Routine Activity Theory Framework. See Lawrence E. Cohen, James R. Kluegel, and Kenneth C. Land, "Social inequality and predatory criminal victimization: An exposition and test of a formal theory," *American Sociological Review*, vol. 46 (1981), pp. 505-524. See also: Christopher Birbeck and Gary La Free, "The situational analysis of crime and deviance," *Annual Review of Sociology*, vol. 19 (1993), p. 126.

indicted while their husbands were also indicted (Ieng Sary and Laurent Gbagbo).

The genocide in Rwanda is often referred to as the first period of mass atrocities in which so many women were involved. This however is not true. The genocide in Rwanda does stand out for the number of civilians involved but this includes men and women and thus in absolute numbers this might indeed be the genocide in which most women were involved. Recent publications have however shown that many women have been involved in other periods of mass violence as well such as amongst others in Nazi Germany. But also many women have been active in African wars, as members of rebel forces or in European and Middle Eastern countries as terrorists.

Women who are involved in mass atrocities are often portrayed as either lacking agency; being insane or sexually deviant. Sjoberg and Gentry have called this the mother, monster and whore narrative. When women are on trial the focus of attention is often more on the fact that they are women or their looks than their crimes. Women who are on trial often refer to the fact that they are women, sometimes even mothers and grandmothers and seem to say to the judge: how can I be involved in mass atrocities? Pauline Nyiramasuhuko for instanced called out: 'I cannot even kill a chicken how can I be involved in a genocide?'

In my research I concluded that women who commit mass atrocities do not differ much from their male counterparts. Their involvement in mass atrocities can be explained in a very similar way as the involvement of men can be explained: they follow orders, follow the group and get caught up in a spiral of violence and gradually get used to it just like men. Some women are forced, while others participate voluntarily. Those who participate voluntarily strongly believe in the ideology and the need to change society by using violence – just like many men. They believe that the violence they use is necessary and legitimate. They believe they are entitled to use such violence and that they are fighting on the right side and are doing the right thing – just like many men.

Although there are more similarities than differences between male and female perpetrators – we do need to take into account that women are underrepresented in militarized units and that these units are very masculinized organizations. The consequence thereof is that women within those units are more vulnerable than men; they are often seen as inferior and have to face prejudice and discrimination. This sometimes makes those who joined such organizations voluntarily very eager to show that they are not very different from the men.

They want to be part of the group, want to show they are one of the guys. They want to show that they too fit the image of the male warrior who does what it takes to win a war: and if that involves using extreme levels of violence (read commit atrocities) they are prepared to do so (just like many men). But apart from this vulnerability I concluded that female perpetrators can be as brutal and cruel as men.

This conclusion did not surprise me but the attention my research and conclusion received clearly shows that the media and general public had apparently expected (or hoped for?) something else. In our gendered perspective many people still see a war as a fight between armies consisting of male warriors and in which men are the perpetrators and women the victims. But this perception is not accurate: contemporary wars often involve many civilians and both men and women are victimized but also: both men and women are the victimizers. The media attention for my research can be explained by these gender images and our strong belief (hope?) that women would be different from men. It took us a long time to accept that most (male) perpetrators are ordinary people rather than disturbed psychopaths and now we have to accept that female perpetrators too are just ordinary women in extra-ordinary circumstances.

## DISSERTATIONS

### **Advocates of Humanity: Human Rights NGOs in International Criminal Justice (Ph.D. thesis)** By Kjersti Lohne

'Act Now! – Campaign for Global Justice', 'Join the Movement to End Impunity', 'Together for Justice', 'Where does your country stand?' – These messages fill the homepage of the Coalition for the International Criminal Court (CICC), an NGO coalition consisting of more than 2,500 civil society organizations worldwide. The activists have joined forces in a 'transnational advocacy network' (Keck and Sikkink 1998) in support of the first ever global criminal court – the International Criminal Court (ICC). The development of international criminal justice is considered part of the advance towards a more 'people-empowering' international rule of law – the emergence of a global criminal order created by and for 'the people' rather than states. Accordingly, the creation of the ICC is widely referred to as a 'global civil society achievement' (Glasius 2006), or even, an 'achievement of the masses organized' (Cakmak 2008: 373). According to Benedetti, Bonneau, and Washburn (2014: 68), the emergence of the CICC as 'the most advanced and sophisticated organization thus far created collectively by civil society to influence and shape multilateral treaty-making is an irresistibly

compelling feature of the story of the Rome Statute'. But how can we understand the relationship between 'global civil society' and global criminal justice-making? Who 'is' global civil society and how do they imagine global justice through the ICC? This research is about this relationship, and what it can tell us about the meaning of punishment at the global level of analysis.

To this end, the thesis offers an analysis of transnational advocacy networks in their mobilization for global justice through the ICC. A central objective is to explore how connections are made, and how forces and imaginations of global criminal justice travel. How do NGOs 'connect' for justice, and what are the aspects of global social organization that enable these linkages and ruptures? To explore these social (dis)connections, I have approached the transnational networks of NGOs advocating for the ICC as an ethnographic object, and have carried out multi-sited ethnography, primarily in The Hague and Uganda. The thesis is therefore concerned with how the role of international human rights NGOs in international criminal justice yields empirical insights into the meaning of punishment in a global society. This entails taking 'seriously the rhetoric and motivational formulations of penal reformers, which are so often framed in the language of sensibility, refined feeling, and humanitarianism' (Garland 1990: 198). Yet while attention to the emotional aspects of global criminal justice-making has a necessary descriptive component, it is their collective configurations that become important for recognizing their global force – when sensibilities take on determinative capacities (see also Silbey 1992). This is therefore also a thesis about the humanitarian imaginary, and about its force as the expression of cosmopolitan solidarity (Calhoun 2010). Accordingly, this makes it an account of the connections and combinations of humanitarianism and 'penalty' – 'the complex of discourses, institutions, laws and processes of legal punishment' (Garland 1990: 10) – in transnational advocacy and justice-making.

Part I inquires into the *materialities* of international criminal justice and the role of NGOs, probing the 'where', 'how', and 'who' of global criminal justice-making and global civil society. Chapter 3 analyses international criminal justice from the perspective of space, showing how global justice-making takes shape across a multiplicity of scales, geographies and sites. The objective is thus to 'highlight those spaces less visible, to identify the lived spaces of international law, the contexts of where international law "happens", and identify the voices that are able to participate in the "where"' (Pearson 2008: 497). While space is the dimension

of materiality, it is also the dimension that confronts us with the co-existence of 'the other' – of the simultaneous being of another, and it is therefore always social and political (Massey 1994). An inquiry into how global justice-making is spatially situated is therefore an inquiry into its geography of power. Crucially, as noted by Pearson (2006: 284), 'the changing geographies of power are leading to the creation of new spaces for interaction between emerging actors, particularly in terms of formal and informal sites of international lawmaking'. This chapter therefore situates 'transnational advocacy networks' (Keck and Sikkink 1998) as part of the geography of power of international criminal justice, and thus provides the necessary conceptual and empirical backdrop for asking, as I do in Chapter 4, *how* transnational advocacy networks navigate within the transnational and global space of international criminal justice-making. As materiality, metaphor and concept, 'networks' have become central in making sense of patterns of global social organization (Castells 1996, Slaughter 2004). As a paradigmatic example of global connection, Chapter 4 therefore examines the networked organization of NGOs at the ICC, and in particular, the centrality of the Coalition for the International Criminal Court and its core member NGOs. However, while most theories of networks emphasise consensus and connections, in recognition that 'the mission of the universal is to form bridges, roads, and channels of circulation' (Tsing 2005: 7), this research is also animated by the search for *disconnections* and 'frictions' in global encounters of justice-making. Chapter 5 therefore further narrows the unit of analysis, from a macro level perspective on space and networks towards a micro level perspective on individuals, asking the key question: who are the individuals with access to global justice-making processes – who are the advocates of international criminal justice?

Together, the chapters in Part I of this thesis are primarily concerned with mapping the global connections and disconnections of global criminal justice-making. However, in recognition that globalization 'is not just the production of (dis)connections, but simultaneously ... the production of a *convincing ideology* that obscures the source of those (dis)connections and presents them as something natural and eternal' (Burawoy 2001: 150), Part II turns to *imaginings* of global criminal justice. We usually think of the domestic system of punishment as involving three embodied relations: the offender and the offence – who and what we punish; the offended against and the victimized – representing the harm that has been caused by the offender's offence; and the punishing authority, that is, the state. In Part II of the thesis,

this tripartite structure of criminal punishment is analysed as it operates in global justice-making. It examines what mentalities and sensibilities are at play in criminal justice when they are disembedded from the 'Westphalian' imaginary. How do global forces and imaginations play into the meanings of criminal punishment?

Chapter 6 examines how human rights NGOs have turned to criminal law, and discusses how human rights comprise both punitive and non-punitive elements. Through a comparison with the 'crime complex' in late-modern societies (Garland 2001), the chapter begins to flesh out what can be called a 'cosmopolitan penal imaginary' of global criminal justice which both chimes with and departs from the usual criminological diagnosis of penalty at the national level. While the centrality of victims is an important feature of both domestic and international criminal justice, the proliferation of groups speaking on their behalf demonstrates not only their powerful motif but also their continued politicisation (Walklate 2005). Chapter 7 thus probes deeper into the representation of victims, both culturally and by human rights NGOs at the ICC. An important element in both of these chapters is the 'unsettling' of the retributive paradigm (Hoyle and Ullrich 2014) and a cosmopolitan view of global criminal justice as a form of social justice and development. Chapter 8 discusses the multi-scalar ambitions of global criminal justice-making, and the use of the ICC as a crowbar for 'penal aid' in the global south (Brisson-Boivin and O'Connor 2013: 216). Drawing on Durkheimian approaches to punishment, the chapter analyses global criminal justice-making as part of efforts to create global social order – and to make 'humanity' its 'sovereign'.

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### **The Law and Politics of the Crime of Aggression (PhD dissertation)**

**By Marieke de Hoon**

During the 2010 Review Conference in Kampala, delegations from the member states of the International Criminal Court (ICC) came to a consensus agreement to include the crime of aggression into the jurisdiction of the ICC. They decided that in the future, the ICC could become able to address situations of aggressive use of force by prosecuting state leaders for planning, preparing, initiating or executing aggressive resort to armed force against other states.

This dissertation discusses this new development for the notion of aggression by telling two stories. The first story is that of the regulation and criminalization of the notion of aggression. This narrative explores how the right of states to resort to force has changed over the past 100 years into a crime of aggression, and how this process saw several repeating dynamics of contestation, postponement, diplomatic manoeuvring, proceduralization, and delegation of substantive decisions off the diplomats' table. The second story tells of the different ways in which the relationship between law and politics materializes in these discussions on aggression. It describes how the regulation and criminalization of aggression can be read as a story about seeking law as a means to suspend the politics of decisions on use of force. This second story reframes the first, and draws attention to how the regulation and criminalization of aggression (the first story) shows how law and politics relate to and mutually (re)constitute one another.

The main research questions are therefore, first, how the Kampala crime of aggression amendment came into existence and came to be constructed as it is. And second, in what ways law and politics relate to one another and what kinds of law and politics are produced in the construction of the crime of aggression. Law and politics are not meant here as separate realms. Rather, the research is about how, in the regulation and criminalization of aggression, political contexts produce particular kinds of legal constructs and how these kinds of legal constructs generate particular kinds of politics. The research is therefore about the law generated by the politics of regulating aggression and about the politics that is generated through this legal construction, and thus about how law and politics co-constitute each other in the construction of the crime of aggression.

The main argument that is developed in this dissertation is that the discourse and argumentative practices on use of force and aggression demonstrate both the legalists' and the realists' arguments on the relationship between law and politics. On the one hand is the legalist idea that law is able to discipline politics, that it binds and restrains states in their actions, and that it produces a legal framework that consists of rules that discipline what is and what is not an accepted argument. On the other there is the realist idea of law as an empty veil of politics, or in other words, that law is inherently and entirely political and therefore not able to restrain the political. Discussions often present these two understandings of the relationship between law and politics as a dichotomy, and both legalist and realist literatures tend to focus on disproving the other logic. However, this book shows how rather than a

dichotomy, both of these conceptions of law/politics co-exist and are interdependent with one another.

The dissertation is based on discourse analysis of the use of force paradigm and the process of regulating and criminalizing the notion of aggression. Discourse and argumentative practices show that the law on aggressive use of force is inherently political. It cannot overcome this by suspending politics and replacing it with an objective rulebook providing what is and is not aggression. That issue is and remains deeply contested, and this fundamental disagreement cannot be resolved by using the language of law. Nevertheless, this does not mean that law becomes valueless, nor that law has no disciplining power. Use of force discourse also shows, for example, that discussions on use of force have become almost exclusively legalized. Arguments of morality or political interest have been replaced by arguments that invoke one or another legal source. With this adoption of the legal language comes the power of law that disciplines what is and is not recognized as following the *legal* logic and as *legal* argument. Consequently, some positions lose merit, others gain standing. And because of this performative dynamic, new interpretations and arguments constitute new realities, which invites new contestation, leading to new positioning, and so the dynamic goes on and on. Therefore, there appears to be a certain (discursive) disciplining power in law even if this does not overcome fundamental substantive disagreement.

Moreover, the interdependence of these two logics leads to the proceduralization of norms on which there is fundamental substantive disagreement. Throughout the regulatory history of the notion of aggression this phenomenon can be observed. As this dissertation discusses, repeatedly, substantive disagreement on what aggression is and thus on where to draw the line between aggression and non-aggression led to seeking agreement on procedures on how to deal with resolving such a dispute, but elsewhere than on the diplomats' table. It led to finding consensus on *how to* deal with it, rather than *dealing* with it.

Moreover, legalization of a fundamentally contested issue without reaching substantive agreement can also entrench such disagreement by enforcing contested positions with the power of law. Disagreement is no longer the holding of a different view but becomes an alleged 'mistaken understanding' of the law. In addition, the morality that comes from international criminal law's presentation as addressing crimes that are inherently criminal and blameworthy, the *mala in se* crimes, and only the most serious of those, adds

a further moral layer to this entrenched disagreement. Not only is the position of the other disagreed with and an alleged mistaken interpretation of the law, it also represents evil: it tries to justify a crime that belongs to the most serious crimes of concern to mankind, and a crime against all, *erga omnes*. This further entrenches contestation, which, for example, may make negotiated settlement or compromise even harder to find.

This book does not advocate a normative agenda *for* or *against* the crime of aggression or propose a (better) legal provision that would tackle the challenges it identifies and discusses. It rather aims to provide an analysis of the nature, abilities and limitations of the crime of aggression that might contribute to the development of the international criminal justice field. The international criminal justice field is currently in the process of exploring how best to deal with the new crime of aggression. This book aims to contribute to this development by offering an analysis of the notion of aggression to its conceptual core and by tracing its historical roots, beyond its mere jurisprudential application in a court of law. Only by understanding the law and politics of the notion of aggression can a sensible effort be undertaken to work with the crime of aggression in striving for the highly ambitious aims that it is associated with: such as contributing to the suppression of aggressive war, to maintaining peace and security, to ending impunity for those engaging in aggressive use of force, and to seeking justice for those that are affected by aggression. Striving after socio-political goals like these with a legal notion that regulates the most political decision a state has (resorting to force to protect its way of life, in narrower or broader interpretations thereof), requires a profound understanding of the interaction of law and politics and how their interaction has (re)constituted and (re)shaped the notion of aggression throughout history to arrive at the crime of aggression amendment that was adopted in Kampala.

## BOOK REVIEW

**Susan Slyomovics: *How to accept German Reparations*, University of Pennsylvania Press Philadelphia 2014 ISBN 978-0-8122-4606-3  
By Frederiek de Vlaming**

Auschwitz survivor Vera Slyomovics (1926) never submitted a claim to any of the post war German *Wiedergutmachungs* programs. She did not want to touch 'blood money' as it would make her feel filthy. For Vera and her husband, the Germans should never have been given the opportunity to assuage their wrongful past through compensation of their former victims. They also never filed for indemnities from the post-Communist Czech

Republic to regain their confiscated factory and house. But Vera's mother, Gizella Hollander (1905-1999) applied to every possible compensation program Germany offered to Holocaust victims. She considered compensation a reminder to the Germans that she was there, alive and kicking.

The Slyomovics family left Europe after the war and emigrated to Canada. Their Canadian born daughter, anthropologist Susan Slyomovics, wrote about the *Wiedergutmachung* from the perspectives of the members of this Czechoslovak Jewish family. *How to accept German reparation* (2014, University of Pennsylvania Press), is about what it means for Holocaust survivors to be offered and receive money from the state that once tried to destroy them. Little is known about this side of the *Wiedergutmachung* programs that run to this day and by now have paid out over 60 billion dollars. The book offers a wealth of multi-disciplinary perspectives on the relationship between a former criminal state and its victims.

Vera Slyomovics, who at first rejected any form of compensation, slightly changed her attitude after a brief but emotional meeting with the newly elected German president von Weizsäcker in 1985 at the consulate in Vancouver. He kissed her on the cheek and then kissed her Auschwitz tattoo and bid her to apply for compensation. Von Weizsäcker embodied the new and friendly face of Germany. The gentle gesture of the German president was in sharp contrast with the experiences of most survivors who submitted their claims from the start of the program in the early 50-ies up to the early 80-ies. They were confronted by obstruction, at best indifference from the German bureaucrats who processed their claims and the doctors who examined them. Applicants were regularly met with distrust, accusations that they were exaggerating their suffering or being greedy, and suspicions of defrauding the state, an experience described earlier in *Paying for the past* by Christian Pross (1998). Most of these bureaucrats and doctors were former Nazi officials and anti-Semitism had by no means disappeared. Many claimants relived their traumas only to drop their claims without having received a single mark.

The decision to accept or not to accept money depended on particular experiences, personal considerations and temperament. The author's grandmother, Gizella Hollander (1905) who, together with her daughter Vera, survived Auschwitz, had been a successful business woman before the war. Within hours after her liberation from the camp she requested the German camp guard overseeing her work in Auschwitz to issue her a 'work certificate', a rare example of anticipation. For Gizella the *Wiedergutmachung* money was not a form of compensation for the

sufferer but rather, a punishment of the wrong-doer. The request to be compensated symbolized both a signal to her former torturers that she was still there, and alive, and - as her granddaughter writes - the 'push(ing) back (of) her pain'. Until her death in 1999, the former ghetto worker, former camp inmate, former slave laborer received a monthly income that allowed her - at least in material terms - a reasonably comfortable living in Israel.

Slyomovics delves deep into the intriguing question of the relationship between money and suffering. The compensation monies awarded under the *Wiedergutmachung* programs were - and are - never huge amounts. It is difficult to comprehend the meaning of the 'monetization of guilt' both for the giver and the receiver. Is money exchanged for forgiveness? Does the acceptance of money symbolize the acceptance of the giver? And are reparations ever enough? Slyomovics observes that the amounts are never a real point of discussion. It is the symbolism behind the few hundred marks that counts, which is different for every person. For Slyomovics' grandmother the acceptance of money was a way to put distance between herself and her German persecutors, a way of telling them: 'I won't forget you and I will never forgive you.' For Slyomovics' mother, Vera, it was the other way round, a way of re-aligning with the Germans. 'Money is the bond of all bonds', Slyomovics quotes Marx, 'it is the coin that really separates as well as the real binding agent.' The purpose of money or monetary payments is a 'material embodiment of our links to each other and to society. The proceedings, the bureaucracy around the compensation schemes is the ongoing documenting of a life, through forms and recounting what happened, pieces of evidence, that there was life, there we once had properties [...], it is a form of remembering, for as long as there is the remembering, talk about someone, written about someone, his or her soul remains among us.'

For Vera the whole reparations process indeed triggered a form of remembering but she could not experience it as positive: ever since she decided to submit a claim and began to receive the monthly *Wiedergutmachung* in her bank account, she is repeatedly reminded of her father's killing. It prevents her from 'healing and building a new life.' 'Before, I was clean', she tells her daughter.

## SELECTED NEW PUBLICATIONS

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

### **Action for Armed Conflict. 2015. Acknowledge, Amend, Assist: Addressing Civilian Harm Caused by Armed Conflict and Armed Violence**

Mitigating the human costs of armed conflict and armed violence has become a moral and legal imperative over the past two decades. Within the international community, several strategies for helping civilian victims have emerged. A publication by Harvard Law School's Human Rights Program and Action on Armed Violence (AOAV), seeks to advance understanding and promote collaboration among leaders in the field.

The 28-page report, , examines a range of current approaches: casualty recording, civilian harm tracking, making amends, transitional justice, and victim assistance. In so doing, the report illuminates their commonalities and differences and analyzes the difficulties they face individually and collectively.

"These programs all provide valuable assistance to civilian victims, but they have yet to be viewed holistically," said Bonnie Docherty, editor of the volume and lecturer on law in the Human Rights Program. "A comparative look at the approaches could help reduce overlapping efforts and identify gaps that should be closed."

*Acknowledge, Amend, Assist* takes its name and much of its substance from a two-day global summit held at Harvard Law School in October 2013. The event brought experts from government, civil society, and academia together to explore the challenges of meeting victims' needs and to learn about where their work might coincide and/or conflict. This publication seeks to build upon the momentum generated by the summit and present the issues that it raised to a wider audience.

**Bergsmo, Morten, CHEAH Wui Ling and YI Ping (eds.) 2014. 'Historical Origins of International Criminal Law: Volumes 1 and 2' (1,525 pp.) and Morten Bergsmo and SONG Tianying (eds.) 2014. 'On the Proposed Crimes Against Humanity Convention' (503 pp.)**

In the first two anthologies on 'Historical Origins of

International Criminal Law', 50 authors examine trials, legal instruments and publications that may be said to be building blocks of contemporary international criminal law. The volumes aspire to generate new knowledge, to broaden the common *Hinterland* to international criminal law, and to vertically consolidate and de-polarise this relatively young discipline of international law. The underlying research project also questions our fundamental assumptions of international criminal law by going beyond the geographical, cultural, and temporal limits set by the traditional narratives of its history.

In 'On the Proposed Crimes Against Humanity Convention', 16 authors discuss the need for and nature of a convention on crimes against humanity, using the 'Proposed Convention on the Prevention and Punishment of Crimes Against Humanity' as an important reference point. Authors assess how such a convention may consolidate the definition of crimes against humanity, and develop measures for their prevention and punishment, decades after the conclusion of the 1948 Genocide Convention and 1949 Geneva Conventions. The book underlines the importance of avoiding that the process to develop a new convention waters down the law of crimes against humanity or causes further polarisation between States in the area of international criminal law. It suggests that the scope of the obligation to prevent crimes against humanity will become a decisive question.

### **Bird, Elizabeth & Fraser M. Ottanelli (eds.). The Performance of Memory as Transitional Justice. Intersentia 2014.**

Based on case studies spanning time and geography from the Spanish to the Nigerian civil wars, to government repression in Argentina, genocidal policies in Guatemala and Rwanda and on to forced population removal in Australia and Israel, this collection represents a focused attempt to come to grips with some of the strategies used to express traumatic memory work. Together, the essays constitute a kaleidoscope of new approaches to show how such performances of memory contribute to transitional justice efforts, demonstrating the complexities of striving for justice and reconciliation through the public expression of shared memories of violence.

**Fijalkowski, Agata & Raluca Grosescu (eds.) 2015. Transitional Criminal Justice in Post-Dictatorial and Post-Conflict Societies. Intersentia.**

This volume considers the important and timely question of criminal justice as a method of addressing state violence committed by non-

democratic regimes. The book's main objectives concern a fresh, contemporary, and critical analysis of transitional criminal justice as a concept and its related measures, beginning with the initiatives that have been put in place with the fall of the Communist regimes in Europe in 1989.

The project argues for rethinking and revisiting filters that scholars use to interpret main issues of transitional criminal justice, such as: the relationship between judicial accountability, democratisation and politics in transitional societies; the role of successor trials in rewriting history; the interaction between domestic and international actors and specific initiatives in shaping transitional justice; and the paradox of time in enhancing accountability for human rights violations. In order to accomplish this, the volume considers cases of domestic accountability in the post-1989 era, from different geographical areas, such as Europe, Asia and Africa, in relation to key events from various periods of time. In this way the approach, which investigates space and time-lines in key examples, also takes into account a longitudinal study of transitional criminal justice itself.

**Hinton, Devon Emerson & Alexander Laban Hinton (eds.). *Genocide and Mass Violence. Memory, Symptom and Recovery.* Cambridge 2015**

What are the legacies of genocide and mass violence for individuals and the social worlds in which they live, and what are the local processes of recovery? *Genocide and Mass Violence* aims to examine, from a cross-cultural perspective, the effects of mass trauma on multiple levels of a group or society and the recovery processes and sources of resilience. How do particular individuals recall the trauma? How do ongoing reconciliation processes and collective representations of the trauma impact the group? How does the trauma persist in 'symptoms'? How are the effects of trauma transmitted across generations in memories, rituals, symptoms, and interpersonal processes? What are local healing resources that aid recovery? To address these issues, this book brings into conversation psychological and medical anthropologists, psychiatrists, psychologists and historians. The theoretical implications of the chapters are examined in detail using several analytic frameworks.

**Keiler, Johannes & David Roef (eds.). *Comparative Concepts of Criminal Law.* Intersentia 2015.**

*Comparative Concepts of Criminal Law* is unique in the sense that it introduces the reader to the

fundamental concepts and rules of substantive criminal law in a comparative way and not just to the criminal law system of one specific jurisdiction. Compared with other fields of law, like contract and property law, comparative research into the so-called general part of criminal law is quite a recent phenomenon within academia, never mind transmitting this knowledge to students of law. The increasing 'Europeanisation' of criminal law and policy makes such a comparative approach even more necessary.

This handbook therefore fills a legal educational gap by exploring basic concepts of substantive criminal law in three major European legal systems: the common law system of England and Wales and the civil law systems of Germany and the Netherlands. Each chapter focusses on a specific concept or doctrine that is necessary to determine criminal liability (e.g. actus reus, mens rea, defences, inchoate offences). Throughout the book the authors also highlight and discuss some recent legislative and judicial developments that broaden the scope of criminal liability in our modern culture of control.

This book is not only invaluable for students, but also for legal practitioners who want to broaden their knowledge of criminal law.

**Ostojić, Mladen. 2014. *Between justice and stability. The Politics of War Crimes Prosecutions in Post-Milošević Serbia.* Ashgate 2014**

Exploring the impact of the International Criminal Tribunal (ICTY) on regime change in Serbia, this book examines the relationship between international criminal justice and democratisation. It analyses in detail the repercussions of the ICTY on domestic political dynamics and provides an explanatory account of Serbia's transition to democracy.

Lack of cooperation and compliance with the ICTY was one of the biggest obstacles to Serbia's integration into Euro-Atlantic political structures following the overthrow of Milošević. By scrutinising the attitudes of the Serbian authorities towards the ICTY and the prosecution of war crimes, Ostojić explores the complex processes set in motion by the international community's policies of conditionality and by the prosecution of the former Serbian leadership in The Hague. Drawing on a rich collection of empirical data, he demonstrates that the success of international judicial intervention is premised upon democratic consolidation and that transitional justice policies are only ever likely to take root when they do not

undermine the stability and legitimacy of political institutions on the ground.

Contents: Preface; Introduction: international justice and transitional democracy; Setting the context: Serbia's protracted transition; Regime change and the politics of cooperation with the ICTY; International justice, state responsibility and truth-telling; Domestic war crimes trials; Conclusion: an ambivalent legacy.

**Palmer, Nicola. *Courts in conflict. Interpreting the Layers of Justice in Post-Genocide Rwanda.* Oxford University Press 2015**

The rise of international criminal trials has been accompanied by a call for domestic responses to extraordinary violence. Yet there is remarkably limited research on the interactions among local, national, and international transitional justice institutions. Rwanda offers an early example of multi-level courts operating in concert, through the concurrent practice of the United Nations International Criminal Tribunal for Rwanda (ICTR), the national Rwandan courts, and the *gacaca* community courts.

*Courts in Conflict* makes a crucial and timely contribution to the examination of these pluralist responses to atrocity at a juncture when holistic approaches are rapidly becoming the policy norm. Although Rwanda's post-genocide criminal courts are compatible in law, an interpretive cultural analysis shows how and why they have often conflicted in practice. The author's research is derived from 182 interviews with judges, lawyers, and a group of witnesses and suspects within all three of the post-genocide courts. This rich empirical material shows that the judges and lawyers inside each of the courts offer notably different interpretations of Rwanda's transitional justice processes, illuminating divergent legal cultures that help explain the constraints on the courts' effective cooperation and evidence gathering. The potential for similar competition between domestic and international justice processes is apparent in the current practice of the International Criminal Court (ICC). However, this competition can be mitigated through increased communication among the different sites of justice, fostering legal cultures of complementarity that can more effectively respond to the needs of affected populations.

The book is meant for transitional justice and international criminal law professors and scholars; legal and political professors, and scholars working on the subject of Rwanda's post-genocide courts.

**Seiberth, Corinna. *Private Military and Security Companies in International Law. A Challenge for Non-binding Norms: The Montreux Document and the International Code of Conduct for Private Security Providers.* Intersentia 2015.**

*Winner of the Ciardi Prize 2015*

Many states view Private Military and Security Companies (PMSCs) as crucial to implement their security policy. However, reoccurring incidents of human rights violations have led the international community, private sector and civil society to acknowledge the need for more control over the use of PMSCs. Growing state support for The Montreux Document and an ever growing number of signatory companies to the International Code of Conduct for Private Security Service Providers (ICoC) show that self-regulation through non-binding norms has shifted to the centre of this debate.

This book examines the promises and dangers of emerging non-binding PMSC regulation alongside more traditional forms of law-making such as plans for an international convention on the use of PMSCs. It offers in-depth analysis of legal and political developments that led to the proliferation of The Montreux Document and the ICoC. Identifying the state side of duties and corporate responsibility as leaving gaps and grey zones in international law, it analyses how both instruments address the responsibility to protect and the responsibility to respect. Covering the Private Security Providers' Association's Articles of Association, the most recent developments on the establishment of a PMSC oversight mechanism are included.

Finally, the book provides an original theory of how both instruments could become more effective to protect victims against PMSC human rights violations; The Montreux Document by developing into a form of customary international law, the standards of the ICoC framework by developing into more binding normative standards as a form of 'corporate custom'.

**Straus, Scott. *Making and Unmaking Nations War, Leadership, and Genocide in Modern Africa.* Cornell University Press 2015**

In *Making and Unmaking Nations*, Scott Straus seeks to explain why and how genocide takes place – and, perhaps more important, how it has been avoided in places where it may have seemed likely or even inevitable. To solve that puzzle, he examines postcolonial Africa, analyzing countries in which genocide occurred and where it could have

but did not. Why have there not been other Rwandas? Straus finds that deep-rooted ideology – how leaders make their nations – shape strategies of violence and are central to what leads to or away from genocide. Other critical factors include the dynamics of war, the role of restraint, and the interaction between national and local actors in the staging of campaigns of large-scale violence.

Grounded in Straus's extensive fieldwork in contemporary Africa, the study of major twentieth-century cases of genocide, and the literature on genocide and political violence, *Making and Unmaking Nations* centres on cogent analyses of three non-genocide cases (Côte d'Ivoire, Mali, and Senegal) and two in which genocide took place (Rwanda and Sudan). Straus's empirical analysis is based in part on an original database of presidential speeches from 1960 to 2005. The book also includes a broad-gauge analysis of all major cases of large-scale violence in Africa since decolonization. Straus's insights into the causes of genocide will inform the study of political violence as well as giving policymakers and nongovernmental organizations valuable tools for the future.

**Swaan, Abram de. *The Killing Compartments: The Mentality of Mass Murder*. Yale University Press 2015.**

By historical standards, the early years of the twenty-first century have been remarkably peaceful. Only rarely are people killed by their own kind, and only very, very rarely are they killed by other animals, microorganisms excepted. Nevertheless, even though the statistics should reassure, many people worry about lone killers, murderous gangs, and terrorist bands. At the same time, most people are vaguely aware that even in this relatively calm era, wars have made countless victims.

Yet mass violence against unarmed civilians has claimed three to four times as many lives in the past century as war: one hundred million at least, and possibly many more. These large-scale killings have required the efforts of hundreds of thousands of perpetrators. Such men (and almost all were males) were ready to kill, indiscriminately, for many hours a day, for days and weeks at a stretch, and sometimes for months or even years.

Unlike common criminals who work outside the mainstream of society, in secret, on their own or with a few accomplices, mass murderers almost always worked in large teams, with full knowledge of the authorities and on their orders. Without exception, they operated within a supportive social context, most often firmly embedded in the institutions of the ruling regime. Unlike terrorists,

the mass murderers usually did not want their deeds to be widely known.

How people are enrolled in the service of evil is a question that lies at the heart of this trenchant book. The subject here is mass annihilation – that is, massive, asymmetric violence at close range, where killers and victims are in direct confrontation. Abram de Swaan offers a taxonomy of mass violence that focuses on the rank-and-file perpetrators, examining how murderous regimes recruit them and create what De Swaan calls the “killing compartments” that make possible the worst abominations without apparent moral misgiving, without a sense of personal responsibility, and, above all, without pity.

De Swaan wonders where extreme violence comes from and where it goes – seemingly without a trace – when the wild and barbaric gore is over. And what about the perpetrators themselves? Are they merely and only the product of external circumstance? Or is there something in their makeup that helps them become mass murderers? Drawing on a wide range of disciplines, including sociology, anthropology, political science, history, and psychology, De Swaan sheds light on an urgent and seemingly intractable pathology that continues to poison peoples all over the world.

**Weller, Marc & and Alexia Solomou (eds.). *The Oxford Handbook of the Use of Force in International Law*. Oxford 2015**

This Oxford Handbook provides the most comprehensive, authoritative, and detailed study into the use of force in international law yet available.

Over sixty experts offer an unparalleled assessment of the law of the use of force from a range of interdisciplinary perspectives.

Investigates key recent controversies in this field, including forcible humanitarian action and pro-democratic intervention, the expansive interpretation of self-defence, the ability of non-state actors to mount armed attacks of significant scale and destructive power, and the doctrine of exceptionalism.

### Some other books published recently

Anstett, E. & J.M. Dreyfus (Eds.) (2015). *Human remains and mass violence – methodological approaches*, Manchester University Press.

El-Hal. J. (2013). *The Nazi and the psychiatrist – Hermann Göring, Dr. Douglas Kelley and a fatal*

meeting of minds at the end of WWII, Public Affairs.

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Palmer, N. (2015). Courts in Conflict – interpreting layers of justice in post-genocide Rwanda, Oxford University Press

Stern, J. & J.M. Berger (2015). ISIS – the state of terror, William Collins.

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Triffterer, O. and K. Ambos (2015). Commentary on the Rome statute of the International Criminal Court, Oxford and Nomos Verlagsgesellschaft.

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Weiss, M. & H. Hassan (2015). ISIS – Inside the army of terror, Regan Arts.

## A Selection of Journal Articles

Bolhuis, M. & J. van Wijk (2015). Alleged war criminals in the Netherlands: excluded from refugee protection, wanted by the prosecutor, European Journal of Criminology

Brody, R. (2015). Bringing a dictator to justice: the case of Hissene Habré, JICJ.

Brouwer, A.M. (2015). The importance of understanding sexual violence in conflict for investigation and prosecution purposes, Cornell International Law Journal 48(3).

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Jentzsch, C., S.N. Kalyvas and L.I. Schubiger (2015). Militias in civil war, Journal of Conflict Resolution, 1-15.

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Pemberton, A., R. Letschert, A.M. de Brouwer and R.H. Haveman (2015). Coherence in international criminal justice: a victimological perspective, ICLR 15(2), 339-368.

Robinson, D. (2015). Inescapable Dyads: Why the International Criminal Court Cannot Win." *Leiden Journal of International Law* 28(2), 323-347.

Maystre, M. (2014). The Interaction between International Refugee Law and International Criminal Law with Respect to Child Soldiers, *Journal of International Criminal Justice* 12(5), 975-996.

Muleefu, A. (2014). Reparation for victims of collateral damage: a normative and theoretical inquiry, Wolf Legal Publishers.

Napoleoni, L. (2015). The Islamic Phoenix: the Islamic State and redrawing of the Middle East, Seven Stories

Oosterveld, V. (2014). Sexual violence directed against men and boys in armed conflict or mass atrocity: addressing a gendered harm in international criminal tribunals, Journal of International Law and International Relations

Rowen, J. & J. Hagan (2014) Using social science to frame international crimes, Journal of International Law and International Relations 10, 107-128.

Senate Select Committee on Intelligence (2015). The Senate Intelligence Committee report on Torture, Melville House.

Sivakumaran, S. (2014). Exclusion from refugee status: the purpose and principles of the United Nations and Article 1F of the Refugee Convention, International Journal of Refugee Law 26(3), 350-381.

Shaked, M. (2015). The unknown Eichmann Trial: the story of the judge, Holocaust and Genocide Studies 29(1), 1-36.

Slahi, Mohamedou Ould (2015). Guantanamo diary – one man’s account of rendition, torture, and detention without charges at the hands of the US, Little, Brown and Company.

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Smeulers, A., M. Weerdesteijn, B. Hela (2015). The Selection of Situations by the ICC: an empirically based evaluation of the OTP’s performance, International Criminal Law Review 15 (1), p. 1-39.

Stepakoff, S. G.S. Reynold and S. Charters and N. Henry (2014) Why testify? Witness’ motivations for giving evidence in a war crimes tribunal in Sierra Leone, the Journal of transitional justice 8, 426-451.

Tiernay, M. (2015). Killing Kony – leadership change and civil war termination, Journal of Conflict Resolution 59(2) 175-206.

Wood, R.M. (2014). Opportunities to kill or incentives for restraint? Rebel capabilities, the origins of support and civilian victimization in civil war, Conflict Management and Peace Science 31(5), 461-480.

## MISCELLANEOUS

### The International Crimes Database (ICD)

The [International Crimes Database \(ICD\)](#) invites submissions of short articles for publication in the online paper series of the ICD, the ICD Briefs.

The ICD is an online database, launched in 2013, and is hosted and maintained by the [T.M.C. Asser Instituut](#) in The Hague and supported by the [Netherlands Ministry of Security and Justice](#) and the [International Centre for Counter-Terrorism – The Hague](#). It is furthermore supported by many prestigious international legal institutions, such as the International Court of Justice, the International Criminal Tribunal for the former Yugoslavia, the International Criminal Court and the International Committee of the Red Cross.

The online ICD article series [ICD Briefs](#) is another way in which the website provides in-depth information and insights to visitors through a series

of short articles on topics related to international crimes and international criminal jurisprudence. In addition, the series offers scholars and practitioners the opportunity to make their work available to an international network of ICD users. Some of our *ICD Briefs* have even been included in the Peace Palace Library’s collection. For this series, we are now publishing a call for abstracts.

Please send an abstract of your submission (500 words, incl. brief biographies or author affiliations) to [editors@internationalcrimesdatabase.org](mailto:editors@internationalcrimesdatabase.org) by 1 July. Please also include a CV with your submission. Authors of selected abstracts will be informed by 15 July. Selected authors should be prepared to submit a full paper for review by 1 October. The ICD editorial team will decide which of the full papers will be published on the ICD website.

### JusticeInfo.net

Fondation Hironnelle recently launched the first bilingual (English and French) media of international scope covering justice and reconciliation processes following state crimes and mass violence.

**JusticeInfo.net** is a partnership between Fondation Hironnelle, *Oxford Transitional Justice Research (OTJR)* and the *Harvard Humanitarian Initiative (HHI)*. It aims to be the go-to international media on transitional justice. **JusticeInfo.net** believes that justice and reconciliation processes should go hand in hand with the right to information. But in transitional societies, especially those of the South, access to sources of confirmed and documented information often remains difficult. **Justiceinfo.net** aims to respond to this need amongst the populations of transitional societies, and also to the needs of local and international decision-makers, researchers and all those who are interested in these fundamental issues.

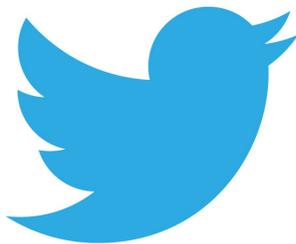
**Justiceinfo.net** is an independent, electronic media platform providing reports and analysis on what is happening in transitional societies. **Justiceinfo.net** provides regular coverage of truth commissions, war crimes trials, reparations and reconciliation programmes, and ways of dealing with the past. **Justiceinfo.net** tells how wounded societies are rebuilding, how they are punishing crimes, how they are learning to forgive. These are key crossover issues touching on justice and politics, law and ethics, that come up in all peace and reconciliation processes. From Colombia to Nepal, South Africa to the Balkans, what is at stake is of fundamental importance. The way the past is dealt with defines the values of the present and societal choices that affect the future.

As well as bringing news, **Justiceinfo.net** will provide analysis, debate, discussion, opinion and background. It will provide diverse content, including text, audio, video and infographics, in English and French. We encourage sharing of our freely reusable content.

**Justiceinfo.net** has the collaboration of Fondation Hirondelle journalists working in its different media (mostly radio stations), as well as a network of international correspondents.

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<https://twitter.com/AletteSmeulers>

If you want to get regular updates on the Hissein Habré case you can follow Thijs Bouwknecht @thijsbouwknecht

### SUBSCRIPTION

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

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