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Contents

INTERNATIONAL CRIMINAL COURT

Central African Republic & Uganda

- Bemba Trial: Prosecutors Challenge Credibility of Bemba Witness
- Bemba Trial: Former Adversaries Deny Knowledge of Crimes by Bemba's Fighters
- Bemba Trial: Former Bodyguard, Victims of Bozizé Rebels Testify for Bemba
- Bemba Trial: Bemba’s Former Bodyguard Testifies in His Defense at the ICC
- Bemba Trial: Bemba ‘Did Not Give Speech to Fuel Atrocities’
- Bemba Trial: Victims of Bozizé Rebels Recount Atrocities at Bemba Trial
- Bemba Trial: Victims of Bozizé Witness Affirms He Never Witnessed Crimes by Bemba’s Fighters
- Bemba Trial: Victims of Bozizé Bemba Hearing Stalls Due to Connectivity Problems
- Bemba Trial: Victims of Bozizé Bemba Witness Says She Was Raped by Bozizé Rebels
- Bemba Trial: Victims of Bozizé Witness: I Have No Knowledge of Atrocities by Bemba’s Troops
Darfur, Sudan
• Sudan Tribune: Sudan to Conduct Thorough Review of Immunity Laws

Democratic Republic of the Congo
• All Africa: Congo-Kinshasa: Lubanga Victims Must Apply to Participate in Ntaganda Proceedings
• Global Research: Kagame’s Mass Atrocities in Rwanda and the Congo
• Lubanga Trial: Q & A With International Criminal Court Registrar Herman von Hebel: Part II

Kenya
• All Africa: Bensouda Not Opposed to Ruto on Hearings
• Institute for War & Peace Reporting: Further Threats to ICC’s Kenya Witnesses
• All Africa: ICC Will Not Detain Kenyans Facing Crime Against Humanity Charges
• All Africa: Bensouda to Restore Evidence
• All Africa: ICC Extends Ruto Sittings
• All Africa: Uhuru ICC Status Forum Set for Next Friday
• All Africa: Two More ICC Witnesses in Ruto Case Withdraw
• Amnesty International: Reject Efforts to Withdraw from the International Criminal Court
• Capital FM: Challenges Abound for the ICC in Kenya Cases
• Global Post: ICC Says Cases Against Kenyan President, Deputy Will Go Ahead

Libya
• Sky News: Gaddafi’s Son Seeks UK Help Over ‘Show Trial’
• Huffington Post: Seif Al-Islam Gaddafi, Muammar Gaddafi’s Son, To Stand Trial for Murder in Libya
• MSN: Libya Trial of Gaddafi Son ‘in September’
• Think Africa Press: It’s Time for Saif al-Isam Gaddafi to Go to the Hague
• BBC News: Daughter of Libya’s Former Spy Chief Senussi Kidnapped

Cote d’Ivoire (Ivory Coast)
• News24: Ghana Won’t Extradite Gbagbo Ally to I Coast
• CitiFM Online: Former Ivorian Minister Calls for Laurent Gbagbo’s Release

AFRICA

International Criminal Tribunal for Rwanda
• IPS News: Tribunal Digs Up Partial Truth
• All Africa: Munyeshaka Case to be Closed by 2014-Report
• All Africa: Genocide Suspects in UK Set for Extradition Hearing

Chad
• All Africa: Jacqueline Moudeina, Chad

Special Court for Sierra Leone
• The New Republic Liberia: Taylor One Month Away - To Freedom or Total Damnation
EUROPE

Court of Bosnia & Herzegovina, War Crimes Chamber

- Balkan Transitional Justice: Bosnia Serb ‘Jailer’ Spotted at Bratunac School Prison
- Balkan Transitional Justice: Bosnian Serb Policeman Appeals Mass Execution Sentence
- Balkan Transitional Justice: Bosnian Croat Forces ‘Beat and Molested’ Female Prisoner
- Court of Bosnia & Herzegovina: Goran Saric Sentenced to 14 Years in Prison for Crimes Against Humanity
- Court of Bosnia & Herzegovina: Status Conference in Vehid Subotic Case
- Balkan Transitional Justice: Bosnian Serbs ‘Used Prisoners as Human Shields’

International Criminal Tribunal for the Former Yugoslavia

- Institute for War and Peace Reporting: Mladic’s "Genocide" Warning Meant to Shock
- Institute for War and Peace Reporting: Croatian Serb Leader Evaded Responsibility for Crimes- Witness
- Institute for War and Peace Reporting: Hague Judges Deny Karadzic Twin Trials Request
- Institute for War and Peace Reporting: Diplomat on Hadzic as "Convincing" Croatian Serb Leader
- Institute for War and Peace Reporting: Uncertainty Over Seselj Case After Judge’s Removal
- Institute for War and Peace Reporting: Karadzic Loses in Challenge to Appeals Process

Domestic Prosecutions In The Former Yugoslavia

- Balkan Insight: Yugoslav Colonel Convicted of War Crimes in Slovenia
- Balkan Insight: Sarajevo Police Chief Jailed For War Crimes
- Balkan Insight: Convicted Sarajevo Policeman Arrested Over Srebrenica Killings
- Balkan Insight: Severed Head Seen in Bosnia School Jail
- Balkan Insight: Kosovo War Crimes Suspects Freed From House Arrest
- Balkan Insight: Srebrenica Genocide Suspects Face Trial in Serbia

MIDDLE EAST AND ASIA

Extraordinary Chambers in the Courts of Cambodia

- Extraordinary Chambers in the Courts of Cambodia: Schedule of Closing Arguments Case 002/01 Adjusted
- VOA Khmer: Cambodian Staff Strike at Khmer Rouge Tribunal
- VOA Khmer: Japan to Help Funding Woes on Cambodian Side of Tribunal
- Extraordinary Chambers in the Courts of Cambodia: Statement on the Passing of Mr. Jacques Verges
- VOA Khmer: Tribunal Walkout a Worrying Sign Analysts Say

Iraqi High Tribunal

Syria

- BBC: Syria Chemical Weapons Attack Killed 1,429, says John Kerry
- The Guardian: Syria: 'Napalm' Bomb Dropped on School Playground, BBC Claims

Special Tribunal for Lebanon
Bangladesh International Crimes Tribunal

- Dhaka Tribune: HRW Slammed for "Unethical, Biased" Reporting
- Bangladesh News 24: Yusuf's Plea Rejected
- Bangladesh News 24: 'Economist Verdict' on Sept 26
- Bangladesh News 24: Charge-Framing Order Against Quasem Deferred
- Dhaka Tribune: Draft Law to Drop 1971 Collaborators, Convicts As Voters
- Bangladesh News 24: Jamaat Financier Indicted on 14 Charges

War Crimes Investigations in Burma

- The Guardian: Burma: Buddhist Mobs Burn Down Muslim Homes and Shops
- The Irrawaddy: Torture Persists in Kachin State

NORTH AND SOUTH AMERICA

United States

- The Washington Post: Two Algerians Released from Guantanamo Bay
- The Washington Post: Senate Committee Approves Resolution Authorizing U.S. Strike on Syria
- The Washington Post: Putin Warns U.S. Not to Strike Syria, Dismisses Case Against Assad as "Rumors"

South & Central America

Peru

- Los Angeles Times: Peru Commandos Kill Two Shining Path Leaders
- Andean Air Mail & Peruvian Times: Fujimori Changes Strategy to Exit Peruvian Prison

Chile

- Associated Press: Chile Ex-Army Chief Admits Handing Child to Nuns

TOPICS

Terrorism

- Associated Press: NY Judge Won't Dismiss Preacher's Terrorism Case
- Associated Press: Greek Militant Anarchist Group Claims Letter Bomb Attack on Anti-Terrorism Prosecutor
- Associated Press: Judge in Terrorist Case Undoes Key Surveillance Ruling Favoring Feds; Reopens Issue to Debate

Piracy
Gender-Based Violence

- Los Angeles Times: Two More Suspects Arrested in Indian Rape Case
- BBC: Delhi Gang Rape: Verdict on 10 September
- International Federation of Gynecology and Obstetrics: "Hundreds of FGM Asylum Applications" Rejected in the UK
- AllAfrica: Kenya: 54 Jailed over Gender Based Post Election Violence Crimes

REPORTS

UN Reports

- Global Post: UN Rights Chief in Sri Lanka to Probe War Crimes
- The Washington Post: UN Tribunal Removes Danish Judge from Long-running War Crimes Trial of Serb Nationalist Seselj
- Daily Record: Alex Salmond Calls for President Assad to Face War Crimes Trial if UN Inspectors Find that His Regime Gassed Civilians

NGO Reports

- Amnesty International: Syria: Possible International Armed Intervention after Alleged Chemical Weapons Attack

TRUTH AND RECONCILIATION COMMISSIONS

Peru

- Peruvians Unhealed a Decade After Truth Commission

Nepal

- Dahal Urges Regmi to Stop Adhikari Murder Probe

COMMENTARY AND PERSPECTIVES

- Why Syria Still Won’t Be Referred to the ICC
- Can the ICC Prosecute for Use of Chemical Weapons in Syria?
- Treaty Interpretation, the VCLT, and the ICC Statute: A Response to Kevin Jon Heller and Dov Jacobs
- Syria: War Is Looming, But Is Justice Possible?
- Justice in Conflict: Could Russia Be a Key to International Justice in Libya?
- Opinio Juris: Could the Security Council Refer Only Assad’s Use of Chemical Weapons?
- Breaking: Judge Harhoff Disqualified from the Seselj Case
A witness has denied suggestions by International Criminal Court (ICC) prosecutors that he may have received "promises" in exchange for giving evidence that implicates forces other than those of war crimes accused Jean-Pierre Bemba in war crimes.

Testifying under the pseudonym 'Witness D04-26,' the witness said he was merely being "cautious" when, prior to his testimony, he told defense lawyers that he had knowledge of the conduct of Mr. Bemba’s Movement for the Liberation of Congo (MLC) troops during an armed conflict in 2002-2003.

The witness has attributed acts of violence, including rape and pillaging, to rebel
troops who were led by François Bozizé. The witness played a role in that rebellion, although details of his role were not disclosed.

He said because the rebels received neither payment nor food, they started stealing from civilians. He denied knowledge of any misconduct by Mr. Bemba’s fighters deployed in the conflict to back up the army of the Central African Republic (CAR).

However, a document prosecutors presented to court showed that ‘Witness D04-26’ told Mr. Bemba’s lawyers that he had knowledge of the MLC’s five month’s intervention in the conflict country. Asked by prosecution lawyer Massimo Scaliotti why, in his four-day testimony, he has not given any evidence to that effect, the witness replied that during his initial contact with defense lawyers, he was being "cautious."

"I did not have complete trust in them and was weary of saying certain things. Today I am in front of professionals, and I must speak the truth," explained the witness.

"Have you been promised anything from anyone in exchange for your testimony to the court?" asked Mr. Scaliotti.

"Nobody has offered me anything," the witness answered.

The prosecution charges that Mr. Bemba is criminally responsible as a commander for murder, rape, and pillaging, allegedly committed by his troops. Mr. Bemba acknowledges that his troops participated in the conflict but claims they were not under his command but that of the then CAR president Ange-Félix Patassé.

In his testimony today, 'Witness D04-26' said the Bozizé rebels did not wear military uniforms but "a mix of attires" as they brutalized civilians.

The trial has previously heard from prosecution witnesses that they recognized MLC soldiers as the perpetrators of crimes because the marauding fighters’ attire distinguished them from Central African soldiers.

A new defense witness will start testifying on Monday, August 26.

**Former Adversaries Deny Knowledge of Crimes by Bemba’s Fighters**

**Bemba Trial**  
By Wakabi Wairagala  
August 23, 2013

This week, two witnesses who testified in the Jean-Pierre Bemba trial at the International Criminal Court (ICC) seemed to exonerate his fighters from responsibility for the atrocities committed during a conflict in 2002-2003. The defense witnesses blamed the crimes on rebel fighters of the group led by Francois Bozizé, which went on to capture power in March 2003.

‘Witness D04-23,’ a former member of the Bozizé force that Mr. Bemba’s Movement for the Liberation of Congo (MLC) militia fought against, said he did not hear of any crimes committed by the accused’s militia. Under questioning by defense lawyer AiméKilolo-Musamba, the witness stated that he heard of many cases of rape perpetrated by the Bozizé rebels during their campaign to overthrow Central African Republic (CAR) president Ange-Félix Patassé.

"There was a great number of excesses where women were taken violently," he said. He added that a member of his family was sexually assaulted but gave details of this incident in private session.
The account by this witness is at variance with prosecution claims that Mr. Bemba’s troops used rape as a weapon of war and committed widespread rapes in all areas where they were present.

Last June, a former soldier in the CAR army said his colleagues raped women whose husbands they suspected of supporting the rebels.

Prosecutors charge that Mr. Bemba is responsible for the rape, murder, and pillaging allegedly carried out by his militia. He denies that his troops committed the crimes.

Meanwhile, ‘Witness D04-26’ also described as "excesses" the rape incidents that he learned about, which Bozizé rebels had allegedly committed between October 25 and October 30, 2002.

‘Witness D04-26’ also attributed acts of pillaging to the Bozizé rebels. He said that due to limited resources, the rebels were not being paid and had no food. This prompted them to "start stealing" from civilians.

‘Witness D04-23’ and ‘Witness D04-26’ testified concurrently before The Hague-based court via video link from an undisclosed location. The bulk of their testimony was heard in closed session.

During cross-examination by prosecution lawyer Eric Iverson, ‘Witness D04-23’ said that he heard of crimes allegedly committed by forces loyal to Mr. Patassé. "Based on our intelligence, we were told that in the other camp they were looting, but we were not told if it was the Libyans, the Banyamulenge, or any other group," said the witness. ‘Banyamulenge was the local term used to refer to Mr. Bemba’s Congolese troops.

The witness said he heard of the arrival of the MLC on October 30, 2002. He said the rebels’ advance towards the capital Bangui was that day "met with strong resistance."

"We were told of the arrival of the Banyamulenge reinforcements, Libyans, and several other groups including [Abdoulaye] Miskine’s troops," recalled the witness.

However, the witness said he did not have details of the Congolese soldiers’ involvement in the conflict: "I did not fight alongside the Banyamulenge. At that time, they were our enemies."

Both witnesses said the Bozizé rebels consisted of "a mix of people," including former soldiers of the Central African armed forces, civilian recruits, and Chadian nationals. According to ‘Witness D0-23,’ these individuals spoke numerous languages, including the Central African dialect Sango, French, and Lingala – a language native to the Congo.

‘Witness D0-23’ said the Chadians were not fluent in French but a number of them spoke Sango. He explained that besides French, the former soldiers in the CAR army, some of whom had attended military training in Congo, spoke Sango and Lingala. He said the civilian recruits included immigrant workers from Congo commonly referred to as "shoe shiners" who spoke Sango, French, and Lingala.

Numerous prosecution witnesses have testified that they identified the perpetrators of the crimes as Mr. Bemba’s troops partly because they spoke Lingala.

Meanwhile, ‘Witness D04-26’ denied suggestions by prosecutors that he received "promises" in exchange for giving evidence that implicates forces other than the MLC.
However, a document prosecutors presented to court showed that 'Witness D04-26' told Mr. Bemba's lawyers that he had knowledge of the MLC's five month's intervention in the conflict country. Asked by prosecution lawyer Massimo Scaliotti why, in his four-day testimony, he did not give any evidence to that effect, the witness replied that during his initial contact with defense lawyers, he was being "cautious."

"I did not have complete trust in them and was weary of saying certain things. Today I am in front of professionals, and I must speak the truth," explained the witness.

"Have you been promised anything from anyone in exchange for your testimony to the court?" asked Mr. Scaliotti.

"Nobody has offered me anything," 'Witness D04-26' answered.

Hearings continue on Monday, August 26.

**Former Bodyguard, Victims of Bozizé Rebels Testify for Bemba**

**Bemba Trial**

By Wakabi Wairagala

August 30, 2013

This week, a former bodyguard to Jean-Pierre Bemba and individuals who were subjected to violence during the 2002-2003 armed conflict in the Central African Republic (CAR) took the stand in defense of Mr. Bemba, who is on trial in The Hague.

While the former bodyguard said the accused was not in command of his troops during the conflict, the other witnesses said it was rebel fighters loyal to François Bozizé, and not Mr. Bemba's troops, who committed atrocities against the civilian population.

Mr. Bemba, 50, is on trial for allegedly failing to discipline his Movement for the Liberation of Congo (MLC) fighters, who prosecutors claim raped, murdered, and pillaged.

'Witness D04-30' testified that she was raped by the Bozizé rebels during October 2002. Her testimony on Friday was suspended due to her ill health and the poor quality of the sound that was being transmitted from the location where she was testifying from via video link.

Another Central African national, who testified under the pseudonym 'Witness D04-29,' said the rebels raped his wife when they arrived in his neighborhood on October 26, 2002. He said following a tip-off from a neighbor that rebels were holding his wife, he went to her rescue.

"Two men came toward me and asked me what I was doing outside at that time and who I was," recalled the witness. "I was scared and didn't say anything. It is then that they started kicking, slapping, and beating me."

The witness said one of the assailants recognized him and asked his colleague to stop the beating. Once the witness managed to lift himself off the ground, he heard his wife crying and noticed three other men a few meters away holding her.

"I told the individual who recognized me that the lady in the hands of his friends was my wife. Then my wife started to explain that the three individuals had raped her," recalled the witness. He said one of the men slapped his wife and the others hurled insults at her, saying she was lying.
"In what language did the men talk to you?" asked defense lawyer Peter Haynes.

"In Sango," the witness replied, referring to a widely spoken language native to the CAR.

‘Witness D04-29’ recognized the perpetrators as CAR nationals who had joined the Bozizé rebellion and disclosed their names in closed session. Meanwhile, ‘Witness D04-36,’ also a Central African, testified that the Bozizé rebels arrived in his neighborhood on October 31, 2002 as they retreated following a failed coup d’état. When the rebels arrived, the local population fled their homes and rebels started looting property, which they loaded on trucks.

This witness said the rebels carted away TV sets, recorders, and suitcases. "From my house they took boxes of canned foods, bags of sugar, and generator [sets]," he added.

‘Witness D04-29’ said although he heard locals talk of refrigerators and TV sets being looted by Mr. Bemba’s troops, the Congolese fighters he saw retreating back to their country did not carry any looted goods.

"Did you hear of any formal victims complaints filed against the MLC?" Marie-Edith Douzima Lawson, a lawyer representing victims in the trial, asked.

"I am not aware of any complaints," replied ‘Witness D04-29.’

For his part, Mr. Bemba’s former bodyguard, who testified under the pseudonym ‘Witness D04-25,’ downplayed the role his boss played in commanding the group’s fighters. He said it was the group’s chief of staff, rather than Mr. Bemba, who was in charge of commanding and disciplining the group’s soldiers – with Mr. Bemba concentrating on political affairs.

"How can he head up military operations? He is a civilian and has no military training," the witness said of Mr. Bemba, while being questioned by prosecution lawyer Jean-Jacques Badibanga.

According to ‘Witness D04-25,’ Mr. Bemba as the MLC political leader may have been awarded the rank of commander, but he did not undergo military training and was not responsible for military operations.

Several defense witnesses, including a military expert, have previously told the trial that operational matters of organized military groups, including disciplinary affairs, fall under the chief of staff and not the commander-in-chief. However, the trial has also heard from numerous prosecution witnesses that Mr. Bemba was in direct contact with his forces deployed in the conflict and that he was able to know about crimes his troops were committing and to discipline the errant fighters.

The former bodyguard dispelled prosecution claims that Mr. Bemba gave a speech to his forces that fueled their alleged misconduct. "Mr. Bemba did not go to Zongo to speak to the troops," he said.

The prosecution claims that Mr. Bemba addressed his forces in the Congolese town of Zongo before they went into the conflict country. They allege that he told his troops that they had no family in the neighboring country and that once in the combat zone, anyone they encountered, including those in civilian clothing, was "the enemy."

According to the witness, the MLC chief of staff, Colonel Dieudonné Amuli, may have addressed the troops before their deployment. The witness could not confirm this though because he was not in Zongo.
Bemba’s Former Bodyguard Testifies in His Defense at the ICC
Bemba Trial
By Wakabi Wairagala
August 26, 2013

Today, a former bodyguard to former Congolese opposition leader Jean-Pierre Bemba started testifying at the International Criminal Court (ICC), where Bemba has been on trial since November 2010.

Testifying for the defense under the pseudonym ‘Witness D04-25,’ the former member of Mr. Bemba’s personal security escort downplayed the role his boss played in commanding fighters of the Movement for the Liberation of Congo (MLC). He said it was the group’s chief of staff, rather than Mr. Bemba, who was in charge of commanding and disciplining the group’s soldiers - with Mr. Bemba concentrating on political affairs.

"How can he head up military operations? He is a civilian and has no military training," the witness said of Mr. Bemba, while being questioned by prosecution lawyer Jean-Jacques Badibanga.

Prosecutors claim that Mr. Bemba had effective command and control of his troops deployed in the 2002-2003 conflict in the Central African Republic but failed to discipline them although he knew that they were committing rape, murder, and pillaging. He denies the charges.

According to ‘Witness D04-25,’ Mr. Bemba as the MLC political leader may have been awarded the rank of commander, but he did not undergo military training and was not responsible for military operations.

Several defense witnesses, including a military expert, have previously told the trial that operational matters of organized military groups, including disciplinary affairs, fall under the chief of staff and not the commander-in-chief. However, the trial has also heard from numerous prosecution witnesses that Mr. Bemba was in direct contact with his forces deployed in the conflict and that he was able to know about crimes his troops were committing and to discipline the errant fighters.

‘Witness D04-25’ denied knowledge of any vehicles looted from the conflict country, which prosecutors claim senior MLC officials took back to the Democratic Republic of Congo.

The witness continues his testimony tomorrow.

Bemba ‘Did Not Give Speech to Fuel Atrocities’
Bemba Trial
By Wakabi Wairagala
August 27, 2013

A former bodyguard to Jean-Pierre Bemba has dispelled prosecution claims that the war crimes accused Congolese opposition leader gave a speech to his forces that fueled their misconduct in an armed conflict.

"Mr. Bemba did not go to Zongo to speak to the troops," said the witness who was testifying at the International Criminal Court (ICC) under the pseudonym ‘Witness D04-25.’
The prosecution claims that Mr. Bemba addressed his forces in the Congolese town of Zongo before they were deployed in the 2002-2003 conflict in the Central African Republic (CAR). They allege that he told his troops that they had no family in the neighboring country and that once in the combat zone, anyone they encountered, including those in civilian clothing, was "the enemy."

However, 'Witness D04-25' said Mr. Bemba did not address the troops at Zongo. He said the Movement for the Liberation of Congo (MLC) chief of staff, Colonel Dieudonné Amuli, may have addressed the troops before their deployment. The witness could not confirm this though because he was not in Zongo.

According to prosecutors, the progression of the MLC in the conflict country was marked with systematic murder, rape, and pillaging. Mr. Bemba’s fighters were in that country to assist its then president, Ange-Félix Patassé, fight off an armed rebellion.

Mr. Bemba denies that he had effective command and control over his troops once they crossed the Congolese border, arguing that they then fell under the command of Central African authorities.

In his testimony yesterday, 'Witness D04-25' said Mr. Bemba did not command the group’s military operations because he had not attended any military academy. The witness said it was Colonel Amuli who was in charge of commanding and disciplining the fighters while Mr. Bemba concentrated on political affairs.

This afternoon, 'Witness D04-25' stated that Mr. Bemba was never in contact with the troops and that all field operations reports within the Congo were sent to the chief of staff. As the president of the MLC, Mr. Bemba received copies of the reports for information purposes only. "In the CAR, the troops were under the command of the Central African military authorities," he added.

Meanwhile, a new witness took the stand today. Going by the pseudonym 'Witness D04-36,' he gave his initial evidence in closed session. He is scheduled to continue testifying tomorrow morning.

Victims of Bozizé Rebels Recount Atrocities at Bemba Trial
Bemba Trial
By Wakabi Wairagala
August 28, 2013

Today, two witnesses testifying for Jean-Pierre Bemba recounted crimes committed by rebels loyal to François Bozizé during the 2002-2003 armed conflict in the Central African Republic (CAR).

'Witness D04-29' told the Bemba trial at the International Criminal Court (ICC) that the rebels raped his wife when they arrived in his neighborhood on October 26, 2002. He said following a tip-off from a neighbor that rebels were holding his wife, he went to her rescue.

"Two men came toward me and asked me what I was doing outside at that time and who I was," recalled the witness. "I was scared and didn’t say anything. It is then that they started kicking, slapping, and beating me."

The witness said one of the assailants recognized him and asked his colleague to stop the beating. Once the witness managed to lift himself off the ground, he heard his wife crying and noticed three other men a few meters away holding her.

"I told the individual who recognized me that the lady in the hands of his friends was my wife. Then my wife started to explain that the three individuals had raped
"In Sango," the witness replied, referring to a widely spoken language native to the CAR.

‘Witness D04-29’ disclosed the names of the rebel fighters who raped his wife in closed session.

After the incident, his wife sought medical assistance at a hospital in the Damara suburb. However, the witness never reported the rape incident to authorities because his mother-in-law advised against it.

Mr. Bemba, a former vice president of the Democratic Republic of Congo, is on trial over the rape, murder, and pillaging allegedly carried out by his Movement for the Liberation of Congo (MLC) troops. He denies that his troops who were deployed in the conflict to help the country’s then president Ange-Félix Patassé fight off the Bozizé-led insurgency, committed atrocities.

Both defense witnesses who testified today laid the blame for the atrocities on the Bozizé rebels. ‘Witness D04-36’ said the Bozizé rebels arrived in his neighborhood on October 31, 2002 as they retreated following a failed coup d’état. When the rebels arrived, the local population fled their homes and rebels started looting property, which they loaded on trucks.

The witness said the rebels carted away TV sets, recorders, and suitcases. "From my house they took boxes of canned foods, bags of sugar, and generator [sets]," he added.

The questioning of ‘Witness D04-36’ by prosecutors and victims’ lawyers was conducted in closed session. Both witnesses testified by way of video link, and the bulk of their testimony was heard in closed session.

Tomorrow morning, ‘Witness D04-29’ continues to give evidence.

**Witness Affirms He Never Witnessed Crimes by Bemba’s Fighters**

**Bemba Trial**

By Wakabi Wairagala

August 29, 2013

On the concluding day of his testimony, a witness affirmed that he never witnessed any crimes by war crimes accused Jean-Pierre Bemba’s fighters. However, the witness said he heard reports of pillaging by the Congolese troops but not of rape or murder.

‘Witness D04-29’ said although he heard locals talk of refrigerators and TV sets being looted by Movement for the Liberation of Congo (MLC) troops, the Congolese fighters he saw retreating back to their country did not carry any looted goods.

The witness said he saw the troops about 20 kilometers from Bangui, the capital of the Central African Republic (CAR), as they returned home after rebels led by François Bozizé captured power in March 2003.

"Did you hear of any formal victims complaints filed against the MLC?" Marie-Edith Douzima-Lawson, a lawyer representing victims in the trial, asked the witness.

"I am not aware of any complaints," replied the witness.
Earlier, during cross-examination by the prosecution, the witness affirmed that the men who raped his wife were members of the Bozizé rebellion. In his testimony yesterday, this witness said the rebels arrived in his neighborhood on October 26, 2002. He said a group of three rebels raped his wife and two others assaulted him. He gave the details of the incident, including the perpetrators’ names, in closed session.

Prosecutors claim that Mr. Bemba had effective command and control of his troops deployed in the 2002-2003 conflict in the CAR but failed to discipline them although he knew that they were committing rape, murder, and pillaging. He denies the charges, saying it was not his fighters who committed the crimes and that it was Central African generals who commanded his troops deployed in the conflict.

The testimony of ‘Witness D04-29’ before the International Criminal Court has been heard remotely by way of video link from an undisclosed location. In order to conceal his identity, judges granted him protective measures, including image and voice distortion as well as the frequent use of private session.

Since the start of the defense case last August, the defense has called 30 witnesses. Presentation of the defense evidence is scheduled to conclude at the end of October, with the testimony of Mr. Bemba.

Hearings continue tomorrow morning with the evidence of a new witness, ‘Witness D04-30.’

**Bemba Hearing Stalls Due to Connectivity Problems**

*Bemba Trial*

By Wakabi Wairagala

August 30, 2013

**Hearings in the trial of Jean-Pierre Bemba stalled on Friday due to the poor quality of sound that was being transmitted from the undisclosed location of a witness who was testifying via video link.**

Presiding Judge Sylvia Steiner prematurely adjourned hearings until next Monday, September 2, stating that the bad connection and the poor health of ‘Witness D04-30’ were making testimony "difficult."

"Judges are very concerned about the poor quality sound, and we are also aware you are not feeling well and had to take medication," she said, adding that giving testimony under those conditions was "too much and we have decided to suspend."

‘Witness D04-30' first appeared before the International Criminal Court this morning. Most of her evidence, under questioning by defense lawyer Peter Haynes, was heard in closed session. Evidence heard in the brief moments of open court indicates that during October 2002, rebels loyal to François Bozizé in the Central African Republic (CAR) raped her.

Due to difficulties in getting some of their witnesses to travel to the seat of the court in Europe, defense lawyers have sought leave from judges for most of their witnesses to testify remotely. This requires audio and video transmission over telecommunications networks between The Hague and African countries where the witnesses are based.

The connection via satellite is prone to disruptions. Last March, hearings stalled due to technical problems caused by a snowstorm in Europe. So far, 17 of the 31 witnesses called by Mr. Bemba’s lawyers have testified via video link. The trial started in November 2010 while the defense opened its case last August.
Mr. Bemba, an opposition leader in the Democratic Republic of Congo, is accused of failing to control his Movement for the Liberation of Congo soldiers who allegedly raped, murdered, and pillaged during the 2002-2003 armed conflict in the CAR. He denies two charges of war crimes and three crimes against humanity arguing that other armed groups that took part in the conflict committed the alleged crimes.

**Bemba Witness Says She Was Raped by Bozizé Rebels**

**Bemba Trial**

By Wakabi Wairagala

September 2, 2013

* A Central African national testifying for Jean-Pierre Bemba at the International Criminal Court (ICC) said today that she was raped by rebels loyal to François Bozizé during October of 2002.

Under questioning by defense lawyer Peter Haynes, 'Witness D04-30' stated that she learned that the rebels, who spent three days in her locality, committed numerous other brutalities.

"I was raped and in pain and suffering and was not able to leave my home," she recalled. "However, I subsequently learned that they [rebels] raped other women and mistreated others."

Testimony by ‘Witness D04-30’ is being heard by way of video link from an undisclosed location. During public broadcasts, her face and voice are distorted in order to protect her identity. Most of her testimony, including details of the rape incident, were given in closed session.

Mr. Bemba has been on trial at the ICC since November 2010 although he has been in the court’s detention since July 2008. He is charged with failure to rein in his Movement for the Liberation of Congo (MLC) soldiers who allegedly carried out mass rapes, murders, and plunder in the Central African Republic during 2002 and 2003. He denies the charges, claiming that it was not his fighters who committed the atrocities.

Over the last two weeks, the defense has called Central African nationals, who have testified that the perpetrators of the abuses were members of the Bozizé rebellion and not members of Mr. Bemba’s militia.

Today’s hearing was prematurely suspended after ‘Witness D04-30’ told judges that she was not feeling well and needed to take a break. Upon resumption after the break, presiding judge Sylvia Steiner announced that the court’s Victims and Witnesses Unit (VWU) had recommended that the witness "be given the rest of the day off." Hearings were postponed until tomorrow morning.

**Witness: I Have No Knowledge of Atrocities by Bemba’s Troops**

**Bemba Trial**

By Wakabi Wairagala

September 3, 2013

* The 31st witness to testify in the defense of Jean-Pierre Bemba on Tuesday stated that she was not aware of any crimes committed by the Congolese opposition leader’s militia. However, ‘Witness D04-30’ said she spent a lot of time indoors during the deployment of the Movement for the Liberation of Congo (MLC) soldiers in her country.

"Did you hear about any crimes committed by the Congolese troops during the time?" asked prosecution lawyer Jean-Jacques Badibanga, referring to the period between October 2002 and March 2003, when fighting raged in the Central African
The witness replied: "I did not hear any such thing."

She explained that after she was raped by rebels loyal to François Bozizé at the start of the conflict, she remained indoors and "maybe" during that time the MLC soldiers committed crimes. "I could not have known," she said.

The witness, a Central African national, has testified at the International Criminal Court (ICC) for three days but provided most of her evidence in closed session. In open court, the witness said she identified her attackers as Central African nationals because they spoke the local language Sango.

She said she learned from members of her community that the rebels, who spent three days in her locality, committed other brutalities.

"Were you given instructions on what to say during your testimony?" Mr. Badibanga asked the witness.

"No, nobody gave me any instructions of that type," replied 'Witness D04-30.' She denied receiving money or promises of any kind in exchange for her testimony.

Prosecutors claim Mr. Bemba, the MLC commander-in-chief, failed to restrain or to sanction his troops who allegedly committed rape, murder, and pillaging in the CAR conflict. He denies all five charges against him, stating that his troops who were in the neighboring country to assist its government fight back a Bozizé-led rebellion were not the perpetrators of the alleged crimes.

Before hearings adjourned this afternoon, presiding judge Sylvia Steiner announced that there were no further witnesses scheduled to testify this week. The date for the next hearing would be announced in due course.

Darfur, Sudan

Official Website of the International Criminal Court
ICC Public Documents - Situation in Darfur, Sudan

Sudan to Conduct Thorough Review of Immunity Laws
Sudan Tribune
September 2, 2013

The Sudanese ministry of justice has announced that it will embark on a comprehensive review of current laws granting immunity to senior government officials, military, police and security personnel

The ministry will hold a workshop on Thursday in the presence of the speaker of the parliament, Ahmed Ibrahim Al-Tahir, and the chief justice, Mohamed Ahmed Abu-Sin, to discuss complications relating to immunity laws.

Sudan’s attorney-general, Omer Ahmed, told reporters on Monday that immunity enjoyed by government and security officials hampers the course of justice and
Ahmed predicted that the workshop will recommend an overhaul of immunity laws as it prevents authorities from taking legal action against individuals who violate the law and commit crimes.

The opposition, however, downplayed the announcement and said that recommendations provided by the ministry of justice will not be implemented due to structural problems in the nature of governance, emphasising that legal reform would only take place through a transitional period involving truth and reconciliation.

The head of the opposition Democratic Lawyers Alliance, Amin Mekki Medani, blasted the Sudanese judiciary, saying it is not neutral and turns a blind eye to violations committed by security forces against activists and opposition.

Medani recalled that perpetrators of crimes against innocent citizens in Port Sudan events in 2005 and Kajbar in 2007, which led to the death of more than 30 people have yet to be prosecuted.

The International Criminal Court (ICC) has issued arrest warrants for Sudanese president Omer Hassan Al-Bashir, his defence minister, Abdel-Rahim Mohamed Hussein, and the governor of North Kordofan, Ahmed Haroun, in connection with war crimes, crimes against humanity and genocide allegedly committed in Sudan’s western Darfur region.

The Sudanese opposition asserts that the ICC rulings is further evidence about the weakness of the local justice system.

In 2004, the UN Security Council (UNSC) formed a commission of inquiry headed by former president of the International Criminal Tribunal for the Former Yugoslavia (ICTY), Antonio Cassese, to look into Darfur abuses.

The commission concluded that Khartoum and government-sponsored Arab militias known as the Janjaweed engaged in "widespread and systematic" abuse that may constitute crimes against humanity.

They further said that Sudanese judiciary is "is unable or unwilling" to prosecute those crimes and thus recommended referring the situation to the ICC.

Over the years Sudan has appointed several special prosecutors and established special courts to go along with them in order to deflect the criticisms over Darfur justice and convince the UNSC to freeze proceedings against Bashir. But to date no high-profile prosecutions have taken place.
The judge handling Congolese military leader Bosco Ntaganda's case at the International Criminal Court (ICC) has rejected a proposal for victims participating in the Thomas Lubanga trial to automatically qualify for participation in the Ntaganda proceedings.

Judge Ekaterina Trendafilova of Pre-Trial Chamber II on June 26, 2013 ruled that victims intending to participate in proceedings against Mr. Ntaganda should apply in writing, using a simplified application form issued by the chamber. She said it would be improper to grant automatic recognition and admission of victims who had participated in the Lubanga trial or any other case before the court.

Carine Bapita, a victims' lawyer, had asked the judge to grant nine individuals already admitted in the Lubanga trial automatic recognition as victims in the Ntaganda case.

The victims' lawyer argued that the facts for which these individuals were admitted as victims in the Lubanga case were the same as in the Ntaganda case. She noted that another chamber of the court had already examined their applications for participation.

However, Judge Trendafilova said the victims' interest to participate in the Ntaganda proceedings could not be assumed on the basis of their participation in another case involving a different accused. Rather, "it is imperative that the victim applicants express their desire to participate in the present case concerning Mr. Ntaganda."

Judge Trendafilova directed the court's Victims Participation and Reparations Section (VPRS) to establish whether victims admitted to participate in other cases at the ICC wished to take part in the confirmation of charges hearing and related proceedings against Mr. Ntaganda. Those willing to participate would be asked to make written applications to the chamber.

A total of 129 persons were granted the status of participating victims in the trial of Mr. Lubanga, who was convicted last year of recruiting, enlisting, and using child soldiers in the Ituri province of the Democratic Republic of Congo and handed a 14-year jail term. He is appealing the conviction and the sentence.

In the Lubanga guilty verdict, trial judges revoked the victim status for nine individuals who had testified in the trial. The judges determined that these victims had provided false testimony, including the claim that they had been child soldiers in Mr. Lubanga’s group.

According to prosecutors, Mr. Lubanga was the head of the Patriotic Force for the Liberation of Congo (FPLC), while Mr. Ntaganda was the group’s deputy chief of staff.

The first warrant of arrest for Mr. Ntaganda was issued on August 22, 2006. He was accused of conscripting and enlisting children and using them to participate actively in hostilities.

On July 13, 2012, a second warrant of arrest was issued for Mr. Ntaganda over alleged crimes against humanity of murder, rape and sexual slavery, and war crimes of murder, attacks against a civilian population, pillaging, rape and sexual slavery. The alleged crimes were committed in Ituri during 2002 and 2003.
Mr. Ntaganda voluntarily surrendered to the court last March and his confirmation of charges hearings will be conducted in February 2014.

In an interview with the www.lubangatrial.org website last month, Paolina Massidda, the Principal Counsel of the Office of the Public Counsel for Victims at the ICC, supported the participation of the Lubanga victims in the Ntaganda proceedings if they were willing to participate in the new case. She noted that the first warrant of arrest against Mr. Ntaganda was similar to that for Mr. Lubanga.

Kagame’s Mass Atrocities in Rwanda and the Congo
Global Research
By Christopher Black & Alex Mezyaev
August 26, 2013

On 17th August 2012 counsel (1) for several Rwandan and Congolese (DRC) political and civil organizations, (2) delivered a complaint to the Prosecutor of the ICC concerning crimes allegedly committed by the current President of Rwanda Paul Kagame which are within the jurisdiction of the ICC. (3)

The complaint filed included UN reports dating back to 1994 concerning Kagame’s mass atrocities in Rwanda and Congo. These reports, two of which were suppressed by the UN and the prosecutors of the ICTR (4), are just a small sample of the extensive and overwhelming evidence which exists in the possession of the ICTR prosecutors that establish that serious crimes against humanity and war crimes were committed by Kagame and his Ugandan and western allies in Rwanda and Congo since 1990. The reports filed include the report of Robert Gersony of USAID who was tasked by the UNHCR in later 1994 with determining the conditions for the return of Hutu refugees who had fled the RPF forces into then Zaire that year. In his October 1994 report, Gersony states that the RPF forces committed systematic and sustained massacres of Hutus civilians beginning in April 1994 and that they were continuing. The UNHCR marked this report confidential and it was suppressed. However, it was placed in the hands of the prosecutor at the ICTR but the various prosecutors there have also kept it suppressed and even denied its existence.

The second report is that of Michael Hourigan, the Australian lawyer and Lead Investigator for Louise Arbour when she was Prosecutor. She tasked him with the mission of determining who had assassinated the Hutu presidents of Rwanda and Burundi and the Rwandan Army chief of staff on April 6, 1994 when their plane was shot down over Kigali. She did so thinking those responsible were Hutu «extremists». However, Hourigan learned, and had the documentary evidence and testimony to prove it, that the Zero Network of the RPF shot down the plane on Kagame’s orders, with the help of a foreign power.

When Hourigan presented this evidence to Arbour she ordered the investigation terminated and the file handed over to her. No further action has been taken on that evidence since. There is evidence that she stopped the investigation on the orders of the American government. This had three consequences; it hid the truth of who was responsible for the events in Rwanda in 1994 from the world, it made Louise Arbour an accessory to a mass murder, and at the same time, it established her value as a cooperative asset that the USA could use in the aggression against Yugoslavia in 1999 when she was told by Bill Clinton to prevent negotiations and prolong the war by charging President Milosevic with false accusations of crimes against humanity.

The third report included in the complaint is the Mapping Report of 2010 to the UN Secretary General that details the large-scale atrocities that were committed by the RPF and the Ugandans and the Congolese in Rwanda and Zaire (DRC) from 1993 to
2003. The final UN report is the Addendum report of the Special Committee of the Security Council (Group of Experts) on the situation in the Congo of June 2012. These UN reports are supported by the evidence held by the Prosecutors at the ICTR and by the evidence presented by the defence in several of the trials as to what actually transpired in Rwanda from 1990 to 1994. This evidence is completely at odds with the accepted western version but has been studiously ignored by both the western media and academics and many so-called experts.

The UN Report giving the ICC jurisdiction over Kagame is known as the Addendum. It is a supplement to a letter to the Secretary General of the UN submitted by the Group of Experts. Once again, it appears there were efforts to suppress this report as the United States tried to prevent its release. These documents present findings that provide a reasonable basis to conclude that crimes within the jurisdiction of the International Criminal Court have been and are being committed by Paul Kagame and others under his command and control and which could not escape the attention of an ICC Prosecutor who was dedicated to eliminating impunity for war crimes. The documented evidence establishes that the Rwandan authorities, led by President Paul Kagame, and including, among others, his minister of defence, General James Kaberebe, General Charles Kayonga, the Rwandan Defence Forces Chief of Staff, and his Permanent Secretary of the Ministry of Defence, General Jack Nziza, committed serious international crimes in the DRC by supporting the M23 "rebel" group.

Specifically the Addendum provides reliable and documented evidence that these officers are providing direct military assistance to the M23 rebellion inside the DRC including the use of children under the age of 18 as M23 combatants (5), and forced former enemy combatants of the Democratic Forces For the Liberation of Rwanda (FDLR) to serve with units sent by the Rwanda Defence Forces to reinforce M23 (6). The criminal responsibility of the President Paul Kagame and his subordinates for these crimes is based on Article 28 of the Rome Statute of the ICC concerning superior responsibility.

The Mapping Report of 2010, which covers the period 1993 to 2003, provides evidence that the crimes committed by Kagame and his allies amounting to genocide against the Hutu people in Rwanda spread into the territory of the Democratic Republic of the Congo, beginning in 1996 through to 2003, where the armed forces of Rwanda, Uganda and of the DRC committed genocide against the Hutu ethnic group in the DRC. One Hutu witness at the ICTR who fled 3,000 kilometers through the Congo forest to escape this attempted extermination called it the «genocide with no name and further testified, along with other witnesses, that they observed UN and US spotter planes over them before each RPF attack». (7) During the entire period of time in which these crimes were committed Paul Kagame had command responsibility over the Rwandan armed forces. (8)

The Complainants in the action of August 17 represent various civil society groups in Rwanda and Congo and include former senior members of the RPF government in Rwanda. This action is perhaps the first of its kind by Hutus and Tutsis acting in cooperation against the Kagame regime and provides a basis for optimism that Hutus and Tutsis can come to an accord and can lead Rwanda and its people forward together. They have requested the Prosecutor to commence an investigation with a view to laying charges against Paul Kagame and any other person or persons complicit in the crimes set out in the Addendum and they have relied on the stated intention of the ICC, set out in its preamble, that no one has impunity for crimes committed within the jurisdiction of the ICC.

The Complaint also notes that there is a vast amount of evidence against Kagame in the hands of the Prosecutors of the ICTR and that, while neither this evidence nor
that of the Gersony, Hourigan or Mapping reports provide the ICC with evidence of crimes within its jurisdiction, they do provide evidence that the crimes of Kagame are of a continuing and grave nature and reveal a systematic pattern and intention and add credence to the Addendum Report. The Complainants also note that this protection of Kagame and his allies from prosecution at the ICTR has had the direct consequence of giving him a sense of impunity and has encouraged him to commit more crimes. An example of the evidence in the hands of the ICTR, (the Hourigan Report being another cited above) is the testimony of defence witness Abdul Ruzibiza, a former officer of the RPF, who testified in the Military I trial that the assassination of the Rwanda and Burundi presidents in 1994 was planned and committed by the Rwandan Patriotic Front under command of current President Kagame and that he was a member of the shoot down team. (9) In September of 2010, Ruzibiza died in Norway at the age of 40 under unclear circumstances and amid rumours of threats against him by the CIA.

This is not the first death of witnesses who gave testimony or others who were intent on exposing the crimes of the RPF and Kagame. Witness GAP, a prosecution witness in the Military II trial against General Bizimungu, the Rwandan army chief of staff, and who had recanted his testimony as false and extorted by threats of the RPF regime was recalled in 2009 to the ICTR to explain his recantation. He never reached the courtroom. He arrived in Arusha and was placed in a UN safe house to await his testimony. The day before he was due to testify he disappeared from the UN safe house and has not been seen by anyone since. Protests and a demand for an investigation by defence counsel about how he could disappear from a UN guarded safe house were ignored.

Seth Sendashonga, the former RPF Minister of Interior, was assassinated by an RPF death squad in Nairobi May 16, 1998, after he announced he was going to testify at the ICTR that the witnesses provided by the RPF to the tribunal were all forced to give false testimony by the RPF government (10). In December 2005, Juvenal Uwilingiyimana, a Hutu, and former Minister of Trade and Commerce, was found floating in a canal in Brussles, naked, with his hands cut off, after disappearing a few weeks earlier. He had been in contact with Steven Rapp and two of his investigators, who were pressuring him to give false testimony for the prosecution at the ICTR, according to a letter he had sent to the President of the ICTR prior to his disappearance. In the letter to the President of the ICTR and to Rapp, he said that Rapp’s two Canadian investigators had threatened to kill him and cut his body in pieces unless he cooperated. He refused to do so and refused to meet with them again. Shortly after that letter was sent he was murdered. Again, a demand by defence counsel for the suspension of Rapp and the two Canadian investigators pending an investigation into their possible involvement was ignored.

One of the writers (11), counsel to General Augustin Ndindiliyimana, chief of staff of the gendarmerie of Rwanda in the Military II trial, was himself threatened in July 2008 by a CIA officer working at the ICTR that if he did not watch his step he would be killed. This threat, echoing previous threats by the RPF, was reported to the President of the Tribunal but he was disbelieved. Scottish lawyer Andrew McCartan, Scotland’s foremost military lawyer, was killed in October 2003 when his car went off a cliff in Scotland just a few weeks after having told the same writer at a meeting in Toronto that he had tried to confront Bill Clinton about the US role in Rwanda and that he had learned secrets about the US involvement in Rwanda in 1994 and its control of the ICTR. Scottish police could find no cause for the car crash. In her memoirs the former Chief Prosecutor of International Criminal Tribunal for Rwanda, Carla del Ponte, reported that Paul Kagame torpedoed the investigation of crimes committed by RPF and that the US government also put pressure on her to leave Kagame alone and when she refused to sign a document to that effect she was soon replaced. (12) To no one’s surprise the new Prosecutor, Hassan Jallow,
immediately lost interest in the RPF and Kagame. In 2010, American defence
counsel, Peter Erlinder was arrested by the RPF regime the day he arrived in
Rwanda to try to defend FDU-Inkingi politician Victoire Ingabire, facing political
charges by the regime, because he had merely repeated publicly what the evidence
was at the ICTR about RPF crimes. He was only released after extensive intervention
by other defence counsel and the reluctant intervention of the US State
Department.

The Rwandan and Ugandan invasions of the Democratic Republic of the Congo
beginning in 1996 created a severe problem for Africa. Year by year the situation
became worse. In 1999 the Democratic Republic of the Congo initiated proceedings
against Rwanda in the International Court of Justice. (13) That proceeding was later
discontinued because of the Congo’s expressed belief in their ability to resolve the
matter by negotiation. But in 2002 Congo was forced to institute new proceedings
against Rwanda. Because of technical reasons (with very questionable
argumentation) (14) the ICJ found no jurisdiction in the case, so the Congolese
claims stay unanswered. (15)

The attempts by the NANO powers to indict heads of state for actions committed on
the territory of foreign countries, using the UN as their tool, have become more and
more frequent but the leaders targeted for this treatment are those who stand in
the way of western interests, never those that bend to their interests. We can cite
as examples the case against Yugoslav president Slobodan Milosevic for the alleged
planning and fuelling of the war crimes in Bosnia, that against Liberian President
Charles Taylor for his alleged aiding and abetting crimes committed in Sierra Leone,
and finally the case against the vice-president of the DRC J-P.Bemba for the military
assistance in CAR.

Kagame is an example of an American supported leader whose crimes go
unpunished because he is useful to them and because they are party to his crimes.
The Prosecutors of the ICTR have wasted 17 years protecting Kagame from his
responsibility for the crimes he and his forces committed in Rwanda in 1994. The
consequence has been a continuation of those crimes into the Congo, drowning the
Great Lakes region of Africa in blood. Since the ICTR has refused to act on its
responsibilities, it is now up to the ICC to take up the burden and to commence an
investigation into the crimes set out in the Addendum report and the crimes
committed by Kagame and others who support him since 2003, the date on which
the jurisdiction of the ICC begins. The impunity given to Kagame and his allies can
only come to an end, and with it the wars in the Great Lakes region, when his
crimes and those of the powers that support him are exposed and brought to
justice. It is not enough to study the consequences of these wars. It is necessary to
understand the reasons and the causes for these wars. The August 17 action at The
Hague is an attempt to start the long delayed process of bringing Kagame and his
allies to justice. Only when this is achieved can Africans begin the to create the
conditions for the restoration of peace and the conditions necessary to develop
Africa’s immense potential. The August 17 action should be supported.

Q & A With International Criminal Court Registrar Herman von Hebel: Part II
Lubanga Trial
By Taegin Stevenson
August 27, 2013

Herman von Hebel is the newly-elected Registrar of the International
Criminal Court (ICC). He spoke with the Open Society Justice Initiative in
June 2013 and answered questions about his experience at other
international tribunals, the Registry’s role in outreach, and priorities going
forward.
TS: You earlier mentioned the Special Court for Sierra Leone (SCSL). How has this job compared so far to past positions as the Registrar for the SCSL and the Special Tribunal for Lebanon?

HvH: It is interesting because this is the third time I have had the privilege of being the Registrar for such institutions. The amazing thing is that every time it has proven to be a completely different job. Although the title is the same and the institutions are similar, in reality they are completely different jobs.

At the Special Court [for Sierra Leone], the strength of that organization came from it being located in the country where the crimes were committed. There was the opportunity for strong outreach, which had a great impact on how the court operated. It was a fantastic experience, and I learned a lot there. The Lebanon Tribunal [based in The Hague] is further away from the country and the crimes are completely different than those of the Special Court or ICC. Lebanon is a country with a huge and complex political situation that created huge challenges for the tribunal in terms of its press strategies, its communication with the people, and its outreach activities.

Here at the ICC our perspective comes closer to that of the Special Court for Sierra Leone. We are not in the country, but we have had discussions about whether we can have in situ hearings. I think in principle these are very positive reflections, but it is, of course, for the judges to make the final call. It is something that I’ve seen in Sierra Leone that can be a very effective way of bringing justice closer to the people. With the ICC the major challenge is that you work with so many different situations at the same time. You work in countries where you are at different levels of peace or lack of peace. You often deal with situations where ongoing conflicts put huge pressures and challenges to our operations. That’s where we have to have a different approach to our work.

Another different aspect is that the ICC has an ASP [Assembly of States Parties] - 122 parties. There is much more interaction between the ASP and the court than at other courts and tribunals. This is an interesting and time consuming part of the job. There is also a huge amount of interest from the Coalition for the International Criminal Court (CICC), made of NGOs and civil society, which is a great thing to see because of their support for the court. It also requires a lot of work in terms of communication. It is fascinating and challenging but also rewarding because if the communication works well with the ASP and with the CICC, you get a lot back from them as well.

TS: How does the Registry ensure those affected by conflict in situation countries know about the work of the ICC and ongoing judicial activities?

HvH: The issue is that even the situation of the Special Court for Sierra Leone, there was comments about the need for more outreach and more communication. In the ICC, we are not in a position to come even close the amount of outreach and communication that the Special Court was able to do. I think to a certain extent, which you may call a frustrating element, is that you can never do enough outreach. Of course there are limitations, but having to deal with eight different situations you simply have limited resources for what you can do. I am working closely with the sections directly responsible on how we can get the maximum amount of outreach from our resources.

Another area we have to work hard on is improving our website. We are now in the process in getting assistance on how to change that. The website is a strong tool, and frankly speaking, I don’t think the website at the moment is doing what it should do or what it can do. In the next year, we are going to work hard on changing the website so that the public at large, journalists, diplomats, lawyers, but
also affected communities and NGOs are really able to keep with developments of the court. At the moment, this is less than optimal.

On the ground, we have outreach and press people in situation countries, but the numbers are limited. Therefore, the amount of effective communication that you can authorize is limited as well. You can never do it enough, but there are limitations financially and with human resources. It is very important to us [the Registry] to work closely with other organizations who are active in the field, journalists that are actively communicating with us, and local NGOs that interested in our work. We have to continue to do that on a daily basis. This is absolutely crucial. It’s one thing to conduct our proceedings right, it is another thing to be objective and in a factual-based way communicate our work and have a dialogue with people about what we do.

TS: Would you like to see a model like the Special Court for Sierra Leone in terms of outreach, where you have parties from all sides participating and taking questions from the public about the work of the court?

HvH: Ideally that would be fantastic to do, but realistically, I don’t think that is possible. The simple fact that the Special Court was based in Sierra Leone allowed for so much more opportunity to communicate. Whereas, the court here is based in The Hague and we deal with situations far away from here. So the possibilities to actually communicate, to enter into dialogues on a regular basis is limited. I think it is simply not possible to do it up to the same level as the Special Court.

But within the limited resources, given the factual situations being far away from the court, we should seek to do the maximum with what we have – dialogue with partners and with affected communities and also strengthen cooperation within the Registry, for example between the victim participation, reparations, and outreach units. There was a recent decision by one of the pre-trial chamber judges, who touches upon the relationship between outreach and victim participation. Reaching out to affected communities and victim participation are strongly connected issues.

TS: Can you talk about how the Registry engages with civil society in countries and builds those contacts and networks?

HvH: I cannot say much because I have only been here less than two months. I have yet to go into the field, although I will go to Kinshasa soon in order to meet with the authorities, diplomatic community, and see pieces of the outreach program there. However, I can bring experience from the other tribunals. I know that there has been contact in the past with the ICC and experts from the Special Court for Sierra Leone, so there is a lot that is ongoing. Now that I’m here, I’m not saying everything is going to start from scratch. I am jumping onto a moving train, and I need more time to see how to further develop that. This is one of my priorities and big projects that I hope to be able to strengthen in the future.

TS: How does the Registry help with positive complementarity and building domestic capacity to investigate and prosecute international crimes?

HvH: Complementarity primarily goes through the Prosecutor’s office. It is up to the Prosecutor to determine – in contemplating the start of an investigation – whether or not the national authorities are willing and able to do undertake the activities themselves. It is not a place where we, as Registry, have a primary role to play.

At the same time, the Registry can assist the prosecution. My experience with the Special Court is that I often had little projects where people working in the national judicial system were coming to the Special Court in order to participate in trainings that were provided by the court [SCSL] for their own staff, so why not bring some
people over from the national judicial system as well. But these were little projects. At the more strategic level, we can partner with other organizations, although it is not our primary mandate to work on the development and strengthening of national legal systems. We do, of course, work with people in the EU system and the UN system with agencies that do focus on that [complementarity] on a daily basis. We can provide expertise. We can exchange information. I am still in the process of seeing how it exactly works, but I will soon travel to New York in order to talk with agencies there that may be interested.

I want to strengthen the work of our field offices on the ground in order for it to be more feasible for the diplomatic community, UN agencies on the ground, and local authorities, to make sure that the face of the court is being recognized as far as possible. But also so that we can be identified as a partner and as a resource organization for others to do their activities that may contribute to the strengthening of national legal systems. Again, this is not our primary mandate, but we can certainly play an additional role there.

TS: You’ve already highlighted engaging with civil society in situation countries, but do you have other projects that you are passionate about and want to take-up at the ICC?

HvH: Primarily, from my perspective and due to my experience at other tribunals, for me the NGOs are a great partner for our work. The ASP is also a great partner. I want to focus on being more engaged with the states parties to strengthen forms of voluntary cooperation. Under the Rome Statute, on one end you have the need and obligation to cooperate with the court, particularly with those countries where the OTP [Office of the Prosecutor] is investigating cases. In addition, you also have issues, like the relocation of witnesses and enforcement of sentencing agreements, etc. That is certainly something I would like to focus on. I think we have a huge number of witnesses that are already under our care and in order to be able to cope with that workload in the future I think we need to strengthen and rely more on the cooperation of states – not only the same states that have already been providing great assistance, but also to other states.

It’s a question of burden sharing and being part of the ICC community. There is an element of assisting the court, supporting the court, and making our work possible in terms of relocation of witnesses – often on a temporary basis, sometimes on a more permanent basis. Also, enforcement of sentences and funding of relocation of witnesses. The kind of activities where privileges and immunities agreements are needed for [ICC] staff working in different countries – there is room for improvement there. I want to have more of a structural approach to strengthen those and to intensify the number of agreements that we can conclude. Hopefully, there will be a listening and a willing ear on the states parties’ side to enter into such agreements. That is certainly a project where I am going to focus on in the years to come.
International Criminal Court Prosecutor Fatou Bensouda is not opposed to Deputy President William Ruto's request to vary the sittings for his ICC trial dates.

Bensouda however prefers breaks after three weeks and not the two-weeks on and two-weeks-off that Ruto had requested in an application filed last week. Ruto has argued that the staggered sittings will allow him to attend to his constitutional duties. The application was made amid fears that his case that of President Uhuru Kenyatta would at one time or another coincide and lead to a situation where both of them are away for a long period of time. The application is yet to be determined.

DP Ruto's and his co-accused journalist Joshua Sang's trial date will begin on September 10 while President Kenyatta is expected to go on trial on November 12.

Further Threats to ICC’s Kenya Witnesses
Institute for War & Peace Reporting
August 28, 2013

Twelve witnesses who will testify for the prosecution in the trial of Kenya’s deputy president William Ruto have told IWPR that they have sought help from the International Criminal Court, ICC after persistent threats to their safety.

IWPR understands that the ICC has moved some of the witnesses, who were living in the Rift Valley region, to a neighbouring country, and that it has relocated others within Kenya. Ruto is facing trial in The Hague on charges of crimes against humanity for atrocities committed during the ethnic and political violence that broke out after Kenya’s December 2007 presidential election.

More than 1,100 people were killed and 600,000 others were uprooted from their homes during two months of bloodshed.

A journalist, Joshua Arap Sang, will be tried alongside Ruto for similar charges including murder, persecution and forcible displacement. That trial is scheduled to start on September 10. Kenya’s president, Uhuru Kenyatta, faces trial in a separate case.

A total of 42 witnesses are expected to be called in the Ruto/Sang case. Witnesses have told IWPR that they received threatening phone calls and text messages warning them about their participation in the trial.

"The threats are too scary, because I was warned by one caller that I would be killed if I did not stop working with the ICC," one witness, who is still in Kenya, told IWPR. "The threats have been consistent in the last few months, but personally I have also taken measures to ensure I am safe, apart from the support I get from the ICC and other protection groups."

IWPR understands that five of the 12 witnesses have now been moved out of the country, while the other seven have remained in Kenya at their own request. Of the latter, six are under protection and are away from their homes, while the seventh is thought to be living in a safe place of his/her own choosing.

These seven witnesses say they have decided to remain in Kenya for the foreseeable future, assuming the security situation does not deteriorate further.
However, they say they may need to be relocated when the Ruto/Sang trial gets under way next month.

"Once the trials begin the situation may not be very safe, and it will be proper to move out of the country until later depending on how the cases will go," another of the seven witnesses said. A witness who is living in Uganda told IWPR that his family in Kenya had been receiving threats intended to get them to make him withdraw his testimony in the ICC case.

"They have been putting pressure on my family to force me to go back home and stop cooperating with the ICC," he told IWPR by phone.

According to the witness, the ICC is relocating him to another African country. Meanwhile, preparations are being made to fly his family out of Kenya.

IWPR contacted the ICC, but the court’s Office of the Prosecutor, OTP, declined to comment on the threats or on any action the court has taken.

"The right forum for this discussion is before the judges, as there is a limit to what the OTP can publicly say about witness issues to the media," an OTP spokesperson wrote in an email to IWPR. "We will continue to work together with the victims and witnesses unit in the registry to address this [witness interference]. We will continue to seek authorisation from the judges for additional protective measures, as needed."

The spokesperson added, "We appreciate the sacrifices that witnesses make for the sake of truth, and we will continue to do all we can to keep our witnesses safe."

The latest threats come after ICC prosecutors and a number of human rights organisations expressed concerns over the Kenyan government’s apparent unwillingness either to investigate or to halt witness intimidation.

Last month, two witnesses decided to retract their evidence in the ICC case against Kenyatta.

In March, the prosecutor was forced to drop charges against a fourth suspect, former civil service head Francis Muthaura, after a witness admitted to being bribed.

At the time, Prosecutor Fatou Bensouda said that other witnesses were now dead, and she has repeatedly spoken of "unprecedented levels" of witness interference in the Kenyan cases.

Bensouda has called on the government and all Kenyans to work together to put an end to the climate of fear surrounding those associated with the ICC.

However, at an IWPR event held in Nairobi in May, Kenya’s attorney general, Githu Muigai, insisted that he was unable to provide protection to witnesses because he had not been informed of their identities.

"I am guilty of not protecting witnesses whose names I will not be given because they are not safe with me, but I am guilty of not protecting them in any event," Muigai said at the May event. "How more ridiculous could that be?"

Advocacy groups such as the New York-based Human Rights Watch, HRW, have also urged the Kenyan government to act.

Elizabeth Evenson, senior counsel for HRW, says the Kenyan government has a fundamental responsibility to help protect the safety of all the witnesses within its borders. According to her, this includes investigating harassment or threats
amounting to violations of national law.

"We have called on the new government to make a public statement regarding its commitment to take steps, including investigating threats, to help ensure the security of those assisting justice processes," Evenson told IWPR. "This would send an important message that any effort to interfere with ICC or other witnesses would be met by the government's action. So far, I am not aware whether the new government has made any statements along these lines."

Local advocacy groups in Kenya have also raised concerns about threats aimed at individuals associated, directly or indirectly, with the ICC.

Ndungu Wainaina, executive director of the International Centre for Policy and Conflict in Nairobi, says Kenya’s Director of Public Prosecutions, DPP, must take steps to ensure those who support human rights and the ICC justice process are not intimidated.

"The DPP's office must further ensure human rights defenders in the country carry out their legitimate human rights work without fear of reprisals and free of all restrictions, in line with the country’s international and domestic obligations to protect and fulfil human rights," he said.

The DDP, Keriako Tobiko, did not respond to an email seeking comment on the matter. Luka Sawe, a lawyer with Ucas Sawe and Co. Advocates in Nairobi, believes that the fact that witnesses have continued to withdraw from proceedings is proof enough of the government’s unwillingness to act on allegations of harassment and threats.

"The government is intentionally going slow over the matter," he said.

**ICC Will Not Detain Kenyans Facing Crime Against Humanity Charges**

*All Africa*

By Macharia Wamugo

August 29, 2013

**President Uhuru Kenyatta,**

his deputy William Ruto and Radio Journalist Joshua Sang will not be detained by the ICC when they appear before the judges at the beginning of their trials in September and November. Spokesman Fadi El Abdallah says the three will only need to appear before the judges when the court is in session and follow the orders set by them during the confirmation of charges.

**Bensouda to Restore Evidence**

*All Africa*

By Nzau Musau

August 30, 2013

**ICC prosecutor Fatou Bensouda has launched a late bid to restore the events of December 30 and 31, 2007 in her crimes against humanity charges against Deputy President William Ruto. Bensouda has sought leave to appeal the decision by the pretrial chamber on August 16 to lock the two days out of her case against Ruto.**

The prosecutor believes the events of the two days are key in supporting the allegations of the case against Ruto as confirmed by the pretrial chamber early last year.

She says if denied, she may need to "reassess" her case theory and strategy as well.
as the presentation of the evidence, including the order of the witnesses. She may also require to do further investigations and apply to add new evidence and new witnesses.

On August 16, Judge Ekaterina Trendafilova, acting as single judge of pretrial chamber, refused to admit the two dates saying the bid was belated and would disadvantage Ruto and his co-accused Joshua Sang’. The judge said the belated bid "showed lack of diligence, organisation and efficiency" on the part of Bensouda.

"The Prosecution's case is, and has always been, that Ruto and Sang' are responsible for the widespread and systematic attack against civilian PNU supporters in Turbo town, Eldoret area, Kapsabet town and Nandi Hills town from on or about December 30, 2007 until the end of January 2008," she said in her application.

The pretrial chamber had, however, only confirmed charges with respect to those incidents which took place in the "greater Eldoret area" for the period of January 1-4, 2008.

**ICC Extends Ruto Sittings**

*All Africa*

*August 30, 2013*

**The ICC has ordered that the case against Deputy President William Ruto be heard on a daily basis from September 10 to October 4, and then from October 14 until November 1.**

Ruto wanted a system of the trial being conducted for two weeks on and two weeks off to help him discharge his responsibilities as Deputy President. Ruto and radio journalist Joshua Sang are charged with crimes against humanity.

Making its decision, the Trial Chamber stressed the importance of advancing as much as possible in the case of Ruto and Sang before other cases affect the schedule.

They noted that "there may be a need to modify the sitting schedule in the present case once the trial in the Kenyatta case commences." President Uhuru Kenyatta's trial is due to start shortly afterwards on November 12.

**Uhuru ICC Status Forum Set for Next Friday**

*All Africa*

*By Margarete Wahito*

*August 31, 2013*

**The International Criminal Court (ICC) has set a status conference in the case against President Uhuru Kenyatta for next Friday at The Hague.**

The conference is aimed at discussing various issues in preparation for President Uhuru's trial, which is scheduled to open on November 12. The Head of State is not required to attend the hearing in person but has to be represented by his Counsels.

"The Chamber schedules a status conference for 6 September 2013 starting at 15:00hrs (Hague time) to discuss a number of issues in preparation for the trial, which is scheduled to open on 12 November 2013," the Court said, "The accused, Mr Kenyatta, is not required to attend the hearing in person but has to be represented by his Counsels."

Video streaming of the hearing will be available (with 30 minutes delay) on the ICC website.
The trial chamber says if the parties and participants wish to raise any particular matter from the main agenda, "they are requested to inform the Chamber thereof by Tuesday next week by way of email."

Kenyatta's defence counsels include Steven Kay QC and Gillian Higgins, while the case will be before Kuniko Ozaki as presiding judge, Judges Robert Fremr and Chile Eboe-Osuji.

Meanwhile, Deputy President, William Ruto and journalist Joshua Arap Sang will know their Trial schedule on September 9.

The Trial will open a day later in the presence of the accused who will answer charges of crimes against humanity allegedly committed in the context of the 2007 post-election violence.

The trial will be held before Trial Chamber 5 'A' composed of judges Chile Eboe-Osuji who will presiding, Olga Herrera Carbuccia and Robert Fremr.

Two More ICC Witnesses in Ruto Case Withdraw

All Africa
By Dominic Wabala
September 2, 2013

Key International Criminal Court prosecution witnesses against Deputy President William Ruto and radio presenter Joshua arap Sang have withdrawn from the case eight days before the two appear at the Hague.

A former NGO employee identified as witness K0336 and a former Kass FM employee have filed affidavits and other documents with the ICC's Office of the Prosecutor, Registry, Office of the Counsel for Defense and Office of the Counsel for Victims seeking to withdraw as witnesses in the case that is scheduled to begin on September 10.

Eldoret based lawyer Christopher Mitei of Arap Mitei and Company Advocates communicated their decision to the ICC in a letter dated August 30.

The first witness identifies himself as a male resident of Elgeyo Marakwet and former Kass FM employee until 2008 when he was sacked.

He believes he was fired at Sang's instigation.

The witness says in October 2012, he was approached by an ICC investigator identified as Paulo to be a witness because he worked for Kass FM between 2005 and 2008. He says he agreed to testify.

However, he says at the time he accepted to participate in the process, he was not in the mindset to make rational decisions because his mother had just died. He said he was in the process of divorcing his wife and had also been admitted to hospital.

The witness says the situation has changed because his father is distressed and has attempted to commit suicide because of his decision to be a witness while his siblings and children are opposed to his participation in the case.

"My father is distressed, sickly and is contemplating suicide. My siblings and children are extremely anxious. My continued participation in the process will cause continued mental anguish and adversely affect my family's well being. My participation has caused my family agony. I have looked at the tranquility currently prevailing in Kenya and I don't want to contribute to a situation which may disturb the peace that Kenyans are currently enjoying. I therefore swear this affidavit to
confirm that I have withdrawn my testimony in its entirety and will not participate in the process any further," the witness says in a sworn affidavit dated August 8.

The second witness, K0336 from Uasin Gishu district, says he has chosen to withdraw as a witness because he is appalled by the inclusion in the case of an NGO and other individuals with political affiliations.

He says he helped identify witnesses during his work as a Kenya National Commission on Human Rights social worker who worked with IDPs and his statements were passed on to the ICC. The witness says he has since lost confidence in the court and has relocated from his hideout in a neighbouring country. He says he has asked his family to leave the safe-house allocated to them in Nairobi by the ICC.

"I, the above named (K0336) do hereby wish to withdraw from the above referred process, which was a voluntary one. I do not understand how and why Africog, Gladwell Otieno and other third parties are participants in a case I have been requested to testify in or in what capacity the prosecutor invited and or involved them in the case. I do not wish to be associated with the above individuals and I do not wish my name to be tarnished. I have seen and felt the agony and trauma that my immediate and extended family has been going through since they learnt that I was a witness in this case and wish to lift the burden from my back. I therefore swear this affidavit out of my own volition on this 29th day of August 2013 to confirm the reasons contained in my letter of withdrawal and in this affidavit," the witness says in an affidavit signed on Friday.

The witness names former Kenya National Commission of Human Rights Commissioner Hassan Omar Hassan, who is currently the Mombasa Senator, Ken Wafula of the Centre for Human Rights and Democracy and George Bett of the Anti Torture Campaign as some of the people who identified and assisted potential ICC witnesses to record statements.

Reject Efforts to Withdraw from the International Criminal Court
Amnesty International
September 4, 2013

The Kenyan government’s proposal to withdraw from the International Criminal Court (ICC) Statute is an affront to the hundreds of thousands of Kenyans who lost their lives or were driven from their homes during the post-election violence that rocked the country in 2007-8.

"This move is just the latest in a series of disturbing initiatives to undermine the work of the ICC in Kenya and across the continent," said Netsanet Belay, Amnesty International’s Africa programme director.

The proposal, which will be debated in an emergency parliamentary session on Thursday, comes just days before Kenya’s Deputy President William Ruto will stand trial in The Hague accused of crimes against humanity. Kenyan President Uhuru Kenyatta also faces serious charges; his trial is due to start on November 12.

"Amnesty International calls on each and every parliamentarian to stand against impunity and reject this proposal." The violence that followed the 2007 election in Kenya left over 1000 people dead and half a million displaced.

President Kenyatta and Deputy-President Ruto, who were both senior political figures at the time of the post-election violence, are accused of crimes against humanity including murder, forcible population transfer, and persecution. President Kenyatta is also accused of responsibility for rape and other inhumane acts – including forced circumcision and penile amputation – carried out by the Mungiki, a violent group many believe President Kenyatta had ties to, to silence critics and eliminate political dissent.
criminal gang allegedly under his control.

They were elected as President and Deputy President respectively in March 2013. The ICC's Statute is clear that there can be no immunity, even for heads of state.

Broadcaster Joshua Arap Sang also stands accused of murder, forcible population transfer and persecution as crimes against humanity. He is due to be tried with Deputy-President Ruto.

Even if Kenya withdraws from the Rome Statute, the decision will only come into effect in one year.

"These cases must proceed and the government has a legal obligation to cooperate fully. Put simply, there is no legal way that the government can evade the justice process in these cases," said Netsanet Belay.

Withdrawal could however preclude the ICC from investigating and prosecuting any future crimes committed after the withdrawal comes into effect. Cases could then only be brought before the Court if the government decides to accept ICC jurisdiction or the UN Security Council makes a referral.

"Essentially, a withdrawal would strip the Kenyan people of one of the most important human rights protections and potentially allow crimes to be committed with impunity in the future," said Netsanet Belay.

"What we currently see is the government committing to cooperate with the ICC’s cases on one hand and taking every opportunity to politically attack the ICC and undermine it on the other."

**Challenges Abound for the ICC in Kenya Cases**

**Capital FM**

By Judie Kaberia

September 4, 2013

Since Kenya became the subject of the International Criminal Court (ICC), it has had to defend and shield itself from allegations of impartiality and political scheming.

The court has faced massive criticism in its choice of the ‘Ocampo Six’, prosecution witnesses and case victims.

Critics argue that the ICC relied on coached witnesses with the goal of fixing the six suspects.

This was strongly argued by the defence during the confirmation of charges hearings held in September in 2011.

Lawyers of Uhuru Kenyatta, William Ruto, Francis Muthaura, Henry Kosgey, Hussein Ali and journalist Joshua arap Sang accused Ocampo of conducting ‘shoddy’ investigations and using fake witnesses to build his case.

The confirmation of charges hearings opened a can of worms as identification and exposure of witnesses became the norm with the ICC doing its best to address the challenges.

At the time, social media became the perfect platform of unleashing names of alleged witnesses.

A trying moment for the ICC was in March 2012 when Ugandan lawyer David Matsanga made public a video with one of the witnesses saying he lied to the court.
The witness was later dropped from the ICC list as Witness No. 4 who was the only witness who testified before charges against Muthaura were confirmed. The prosecution also admitted that his evidence was used against Kenyatta at the pre-confirmation stage.

Withdrawal of witnesses and their evidence became the biggest confrontation for the ICC since protection of witnesses and victims is core and sensitive for it to preserve its incriminating evidence.

The current ICC Prosecutor Fatou Bensouda when announcing withdrawal of witnesses and charges against Muthaura in February 2013 explained that witnesses had been intimidated and others feared for their lives.

In her applications, she has also repeatedly reported that witnesses were being harassed and some of them had declined to testify due to such fears.

Like her predecessor Moreno-Ocampo, Bensouda has been defending the prosecution and explained that thorough investigations had been done and that the court narrowed down on the six individuals but due to lack of sufficient evidence charges against Ali, Kosgey and Muthaura's were dropped.

The prosecutor has maintained that the prosecution has enough witnesses and evidence to use against Ruto, Sang and Kenyatta.

The accused persons have also said they were targeted and have expressed their determination to prove their innocence through their able teams of lawyers.

Whereas the defence has denied ever intimidating ICC witnesses and victims, the prosecution has to date claimed that its witnesses are being intimidated.

However, it is confident that it has reliable witnesses with strong evidence that will lead to convictions of the three Kenyans.

Despite continued efforts and constant reminder that ICC started investigations in Kenya because of the 2007-8 post poll violence and after Kenya failed to instigate a local process to address the violence, the ICC process has been perceived as a political process.

Withdrawal of charges against Muthaura post-confirmation stage was especially a controversy as questions over the credibility of other witnesses remained a puzzle and a matter of contention.

Even though the prosecutor argued that some witnesses have been killed, she has been challenged by the defence to file applications and give evidence of the said deaths.

Following the prosecutor’s announcements and applications, out of the 12 key witnesses used in the Kenyatta case, only five are remaining and in the Ruto-Sang case, there are about 42 witnesses.

The number however could change as the prosecution has said it will ask to be allowed to call additional witnesses.
Chief prosecutor Fatou Bensouda also said relatives of witnesses had been continually approached with bribes and threats to disclose the whereabouts of witnesses in the cases against President Uhuru Kenyatta and deputy William Ruto, who are accused of orchestrating violence after elections in 2007 in which 1,200 people lost their lives.

The two are scheduled to go on trial in The Hague soon - Ruto's trial is set to open next week - despite Kenya's efforts to have the cases dropped or moved closer to home.

"The judicial process is now in motion at the International Criminal Court. Justice must run its course," Bensouda said in a video posted on the court's website.

"Witnesses have gone to great lengths to risk their lives and the lives of their relatives to support our investigations and prosecutions," she added.

Kenya's parliament began debating a motion on Thursday afternoon to withdraw from the Rome Statute that underpins the International Criminal Court.

"I am setting the stage to redeem the image of the Republic of Kenya," Aden Duale, majority leader from Kenyatta's Jubilee coalition, told parliament in a televised session laying out the motion.

Even if Kenya does vote to withdraw, its departure from the first permanent international criminal court would take at least a year and would have no effect on cases already in train, Fadi El Abdallah, the court's spokesman, said on Wednesday.

"It's not possible to stop independent judicial and legal proceedings via a political measure," he said.

The Kenyan president's spokesman was not immediately available for comment, but Ruto's lawyer said he would continue to cooperate with the ICC.

"The deputy president has and will continue to cooperate with the court," said Karim Khan, Ruto's counsel before the ICC.

"He wants to clear his name from this nonsense that's being bandied about."

Khan described as "offensive" Bensouda's claim that the relatives of witnesses against Ruto had been intimidated and said she was trying to divert attention from her office's "amateurish" investigation.

"To seek to create a fog of mystery around the inadequacies of her office by alleging witness intimidation is to distort the truth in hideous fashion," Khan said. He would not comment on whether Ruto supported the motion on withdrawal from the ICC.

Retaliatory Attacks

Kenya has long campaigned against the trials taking place and has rallied support from other countries in Africa. Kenya has asked the ICC to refer its case against Kenyatta back to the east African country, a move that has been backed by other African Union nations.

The African Union has previously accused the ICC of selective punishment by primarily targeting Africans.

Kenyan officials concede the country has not in the past had the ability to try
suspects accused of crimes against humanity, but say its reformed judiciary now does. The ICC has rejected attempts to have the cases moved back to Kenya.

Jakoyo Midiwo, deputy majority leader of the opposition in parliament, criticized the action to pull Kenya out of the ICC, saying the opposition would vote against the motion, which "has divided the country down the middle."

The 2007 violence erupted after supporters of former prime minister Raila Odinga of the Luo ethnic group claimed that former president Mwai Kibaki, a Kikuyu, had stolen victory in the presidential poll.

At the time, Ruto, a Kalenjin, was a key ally of Odinga. Attacks on Kikuyu supporters of Kibaki triggered a bloody cycle of retaliatory attacks against Kalenjins and Luos. Activists greeted the news of Thursday's parliamentary vote with dismay.

"This motion to leave the ICC is a significant setback for a country that once proudly ratified the Rome Statute in 2002," said William Pace, convener of the Coalition for the ICC, a pressure group.

"In the long run, the promoters of this action are hurting the reputation of Kenya as a nation that supports international human rights and the rule of law."

The trial against Ruto starts on September 10 in The Hague, while Kenyatta's is scheduled to open on November 12.

Libya

Official Website of the International Criminal Court
ICC Public Documents - Situation in the Libyan Arab Jamahiriya

Gaddafi’s Son Seeks UK Help Over ‘Show Trial’
Sky News
By Lisa Holland
August 27, 2013

The lawyer representing Colonel Gaddafi's son, Saif al-Islam, is urging the British Government to do all it can to prevent him facing trial in Libya and deliver him to the International Criminal Court (ICC) in The Hague.

The country's public prosecutor said the case against him will be presented to a court in Tripoli on September 19.

John Jones QC told Sky News he fears his client, who faces charges of war crimes and crimes against humanity, will be subjected to a 'show trial' and sentenced to death.

He said: "Executing Saif Gaddafi would be a complete violation of the ICC orders so it's logical and right, and a moral and legal obligation on the UK, to intervene."

It follows a Libyan court's decision to sentence to death Colonel Gaddafi's former education minister Ahmed Ibrahim.
The ICC has also raised concerns about the ability of the Libyan authorities to hold
the trial and the charges they plan to present against Saif al-Islam.

Fadi El-Abdallah, a spokesman for the court, told Sky News: "There is no legal
representation for him on a national level and the operation of gathering the
evidence and protecting the witnesses is not secured."

But the process of transferring Saif al-Islam from Libya to The Hague is proving to
be a complex one.

He was captured by rebel fighters from the Libyan city of Zintan in November 2011
and has been held there, in solitary confinement, ever since.

The Libyan Government is struggling to exert its influence over large parts of the
country and can't transfer him without the permission of Zintan's militia leaders.

John Jones, QC, says it's further evidence that Mr Gaddafi must be handed over to
the ICC.

He said: "Libya's central authorities don't have control of his custody. That proves
the point that if there's no control of is custody, if there's no rule of law in Libya, he
should be tried in The Hague".

Saif al-Islam Gaddafi was once tipped by western governments to lead Libya
towards democracy.

Educated at the London School of Economics and considered by many to be the
country's de-facto prime minister, he refused to abandon his father when protests
sprung in several Libyan cities in early 2011.

He was found by fighters from the Zintan brigade trying to cross into Niger just a
month after his father Colonel Gaddafi was captured and killed.

His last public appearance was in May when he briefly appeared in court to answer
separate charges of endangering national security after he was accused of providing
an ICC lawyer with 'sensitive' documents.

Seif Al-Islam Gaddafi, Muammar Gaddafi’d Son, To Stand Trial for Murder in Libya
Huffington Post
By Esam Mohamed
August 27, 2013

Late Libyan dictator Moammar Gadhafi’s son and his spy chief were charged on Tuesday with murder in relation to the country’s 2011 civil war and are set to stand trial, said Libya’s general prosecutor.

Abdel-Qader Radwan told reporters that the trial will start Sept. 19 on alleged
crimes committed during Gadafi’s 42-year rule and during the eight-month-long
civil war that deposed him.

The defendants are former intelligence chief Abdullah al-Senoussi and Seif al-Islam
Gadafi, the heir apparent and only son of the former dictator who is in custody. A
total of 28 former regime members will face trial that day on various charges
ranging from murder, forming armed groups in violation of the law, inciting rape and
kidnappings.

Radwan said Libyan authorities have issued more than 280 arrest warrants for those
wanted on similar charges.

Radwan’s aide, al-Seddik al-Sur, said spy chief al-Senoussi has confessed to
...
collaborating on producing car bombs in the city of Benghazi, the birthplace of the 2011 uprising.

He added that "defendants were not subject to any form of pressure to extract confessions."

The International Criminal Court charged Seif al-Islam Gadhafi with murder and persecution of civilians during the early days of the uprising. If convicted in that court, he would have faced a maximum sentence of life imprisonment, because it does not have the death penalty. This summer, the international court judges had ruled that Libya cannot give Seif al-Islam a fair trial and asked authorities to hand him over to The Hague.

Nonetheless, Gadhafi's son remains held by a militia group that captured him in the western mountain town of Zintan as he was fleeing to neighboring Niger after rebel forces took Libya's capital.

He is also being tried on separate charges of harming state security, attempting to escape prison and insulting Libya's new flag. The charges are linked to his 2012 meeting with an international court delegation accused of smuggling documents and a camera to him in his cell. Zintan rebels held the four-member team but released them after the court apologized and pledged to investigate the incident.

According to filings by defense lawyers at the court, Seif al-Islam said he wants to be tried for alleged war crimes in the Netherlands, claiming that a Libyan trial would be tantamount to murder.

The rest of Seif al-Islam's family, including his mother, sister, two brothers and others, were granted asylum in Oman in 2012, moving there from Algeria, where they found refuge during the civil war.

The rule of law is still weak in Libya after decades of rule by Gadhafi. Courts are still paralyzed and security remains tenuous as unruly militias proliferate.

The state, however, relies heavily on militias to serve as security forces since the police and military remain a shambles. Successive governments have been too weak to either secure Seif al-Islam's imprisonment in the capital, Tripoli, or put pressure on militia groups to hand him over to the government.

Libya Trial of Gaddafi Son 'in September'  
MSN  
August 28, 2013

"The prosecutor's office has decided to try 30 people linked to the former regime, including Seif al-Islam Gaddafi (and former spy chief) Abdullah al-Senussi," Abdelkader Radouan said.

They are accused of crimes committed during the 2011 uprising which overthrew Gaddafi.

Baghdadi al-Mahmudi, the last prime minister to serve under Gaddafi, and Mansur Daw who headed the People's Guard are also among the accused.

"This affair will be presented on September 19 before the court of first instance in Tripoli," Radouan told a press conference.

The International Criminal Court issued arrest warrants for Seif al-Islam and Senussi in 2011, accusing them of crimes against humanity, and it has a UN Security Council mandate to investigate the Libyan conflict.
Tripoli and the ICC have been locked in a legal tug-of-war over where the two men should face trial for their roles in trying to put down the bloody revolt against the Gaddafi regime.

Tuesday’s announcement of the pre-trial process comes after the ICC in May rejected Tripoli’s request to try the late dictator’s son in a Libyan court because of doubts over a fair trial.

Tripoli has appealed the decision.

The defendants face a string of charges, including the "formation of armed bands to carry out crimes that undermine state security" and "incititation to rape".

Tripoli’s court of first instance, purportedly made up of independent judges, has the power under Libyan law to accept or reject the charges, or to request further investigation.

Observers expect the trial itself to last up to four months.

Seif al-Islam has been held by a brigade of former rebel fighters in Zintan, 180 kilometres southwest of the capital, since his capture in November 2011.

It’s Time for Saif al-Isam Gaddafi to Go to the Hague
Think Africa Press
By Richard Dicker
August 30, 2013

The ICC has issued arrest warrants for both Gaddafi’s son and Abdullah Sanussi, Gaddafi’s former intelligence chief. The stakes surrounding a decision about which court conducts any trial are high, but if conducted fairly, these proceedings offer the possibility to determine guilt or innocence over allegations of the gravest of international crimes. Summary proceedings - without proper investigations or due consideration of the facts - would squander a unique opportunity to demonstrate and strengthen its rule of law.

On 26 February 2011, as government violence against peaceful protestors in several Libyan cities escalated, the United Nations Security Council, by a vote of 15-0, adopted Resolution 1970 to refer Libya’s deteriorating situation to the ICC. Resolution 1970 requires the Libyan authorities to cooperate fully with the court, even though Libya is not a member. That obligation includes abiding by the court’s decisions. Libya itself has promised to cooperate with the ICC and has openly acknowledged that it is bound by Resolution 1970.

Regrettably, the Security Council members that initially championed Resolution 1970 have been largely silent on Libya’s obligation to cooperate with the court. For that body’s resolution to carry any weight, Security Council members should send a strong message to Tripoli to abide by the court’s decisions.

The ICC issued arrest warrants in June 2011 for Saif al-Isam Gaddafi, and Sanussi, as well as Muammar Gaddafi. The three were sought on charges of crimes against humanity for their roles in attacks on civilians, including the murder of peaceful demonstrators, in Tripoli, Zawiya, Benghazi, Misrata, and other locations in Libya. On November 19, 2011, anti-Gaddafi forces apprehended Saif al-Isam Gaddafi in southern Libya and brought him to Zintan, in the Nafussa Mountains, where he remains in the custody of one of the country’s many independent and heavily armed militias. Between national courts and the ICC

It's important to acknowledge that the ICC operates under the principle of
complementarity, which means it is a court of last resort, stepping in only in the absence of genuine national proceedings. Libya filed a challenge on 1 May 2012 to try Gaddafi in a Libyan court. The ICC judges initially granted permission to postpone his surrender to The Hague, pending a decision on the challenge.

However, on 31 May 2013, after weighing oral arguments and written briefs, the ICC judges rejected Libya’s bid and reminded the authorities of their obligation to surrender Gaddafi. The judges held that Libya had not provided enough evidence to demonstrate that it was investigating the same case as the one before the ICC, which it would have to do to take the case back for a national trial, and that Libya was genuinely able to carry out an investigation of Gaddafi.

The judges concluded that the Libyan authorities had neither been able to secure legal representation for Gaddafi nor to manage to transfer him into state custody from his current place of detention in Zintan. The Libyan authorities have appealed this decision. But on 18 July, ICC judges rejected Libya’s request to suspend his surrender to the court pending the outcome of their appeal. Then on August 27, Libya’s prosecutor-general announced that the pretrial phase in domestic proceedings against Gadaffi, Sanussi and other senior Gaddafi-era officials would begin on September 19. However, the Libyan authorities should prioritize obtaining custody of Gaddafi from the Zintan militia holding him a priority so that he can be promptly surrendered to the ICC. To do otherwise would send the signal that the authorities are not in actuality committed to a new Libya marked by the rule of law.

The Libyan judicial system, including abuse in custody, denial of access to lawyers, and lack of judicial review. These issues affect Libya’s ability to ensure that fundamental rights are respected. In addition, despite some positive steps, the Libyan authorities have struggled to establish a functioning military and police force. They depend heavily on contracted militias for law and order and security. The resulting fragile security environment raises serious concerns about whether Libya can guarantee the safety of everyone involved in the proceedings.

Libya intends to proceed with its appeal on Gaddafi, as the litigation over Sanussi moves on a separate track, but in the meantime it should keep its promise to cooperate with the court. Libya understandably wants to see those responsible for past crimes brought to justice. As Tripoli goes forward with its bids at the ICC, it should demonstrate its intention both to abide by the rule of law at home and to respect its international obligations.

**Daughter of Libya’s Former Spy Chief Senussi Kidnapped**

*BBC News*

September 2, 2013

*Justice Minister Salah al-Marghani said police had been escorting Anoud Abdullah al-Senussi from al-Rayoumi prison on Monday afternoon when they were ambushed by heavily armed gunmen.*

The kidnappers opened fire on them before seizing Ms Senussi, he added.

Ms Senussi had just finished a 10-month prison sentence for entering Libya with a forged passport in October 2012.

She was arrested after reportedly flying back to Libya to visit her father, Abdullah al-Senussi, in jail.

Her father is being detained for his alleged role in crimes committed during the rule of Muammar Gaddafi.
He is also wanted by the International Criminal Court (ICC), which has accused him of responsibility for crimes against humanity during the uprising that ousted Gaddafi in 2011.

Judicial police officers were escorting Ms Senussi to Tripoli's airport to board a flight with relatives to the southern city of Sebha when their convoy was ambushed, Mr Marghani said.

"The convoy was ambushed by five vehicles. [The gunmen] were armed to the teeth and started firing their weapons, but it quickly became clear that they wanted to take her. No-one was injured.

"The incident took place about 50m away from the gate of the prison."

Mr Marghani appealed for "hints" about the incident, and said he expected everyone, particularly "revolutionaries" to help find Ms Senussi.

In recent months, she was granted a visit to her father.

The BBC's Rana Jawad in Tripoli says the latest kidnapping may well reinforce the ICC's argument that Libya is not ready to prosecute high-profile cases like that of Abdullah al-Senussi and Saif Gaddafi, both wanted by The Hague.

The central government's lack of control over various armed groups driven by a myriad of agendas has contributed to lax security, our correspondent adds.

[C back to contents]

Cote d'Ivoire (Ivory Coast)

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

Ghana Won’t Extradite Gbagbo Ally to I Coast
News24
August 30, 2013

A court in Ghana on Friday rejected a request from Ivory Coast to extradite a top ally of former president Laurent Gbagbo, ruling that charges against Justin Kone Katinan had "political motivation".

Katinan fled to Ghana in 2011 as a violent post-electoral conflict shook Ivory Coast and he has served as Gbagbo's spokesperson since the ousted strongman's arrest in April that year.

The current government in Ivory Coast has accused Katinan of raiding banks when he served as Gbagbo's budget minister while the regime crumbled.

Ghanaian magistrates court Judge Aboagye Tanor said the charges against Katinan "cannot be devoid of political motivation".

"I will proceed to dismiss the application for the extradition," he ruled, ending a year-long legal battle.
Katinan was first arrested in August 2012 after returning from South Africa to Ghana.

Scores of Gbagbo supporters fled to neighbouring Ghana during the five-month conflict that followed disputed elections in November 2010 and cost around 3,000 lives.

Gbagbo has been transferred to the custody of the International Criminal Court in The Hague, accused of fomenting the wave of violence that swept Ivory Coast after his election defeat.

**Former Ivorian Minister Calls for Laurent Gbagbo’s Release**

CitiFM Online  
September 3, 2012

*Former Ivorian Minister, Justine Kone Katinan has called for the release of former Ivorian President, Laurent Gbagbo after close to two years of standing trial at the International Criminal Court for crimes against humanity.*

Justine Kone Katinan who speaks for former Ivorian President, Laurent Gbagbo was last week acquitted and discharged after facing extradition from Ghana to his home land by the Osu Magistrate Court.

Mr. Gbagbo faces four counts of crimes against humanity and for fomenting a wave of violence after he refused to concede defeat in the November 2010 presidential polls.

Speaking to Radio France International after his release, Kone Katinan indicated that although he is happy about his release, his happiness is incomplete because Laurent Gbagbo is still facing charges at The Hague.

"It’s a moment of joy because for a year I was deprived of my total liberty. I was sought after because of false claims and the judge has cleared me of these charges. I am totally happy even though my happiness is in complete" he said.

According to him, he would be happy "if Laurent Gbagbo regains his liberty and returns to his rightful place because he is an innocent person, who has been at The Hague for the past two years with his freedom taken away."

[back to contents]
The International Criminal Tribunal for Rwanda (ICTR) based in Arusha, Tanzania, is due to conclude its business at the end of 2014 following several deferrals. A United Nations Security Council Resolution set up the tribunal in 1994.

Analysts have globally recognised the ICTR’s role in bringing perpetrators of the 1994 Rwandese genocide to justice. However, for a variety of reasons, they also believe that the tribunal has not entirely fulfilled its mandate.

With a year and a half left of its tenure, the ICTR has tried 75 people, sentenced 46 and acquitted 12. Of the 46 defendants who have been sentenced, 17 cases are still pending before the Appeals Chamber, although most of these appeals are at an advanced stage.

Human Rights Watch (HRW) has been a regular observer of the ICTR’s proceedings which started in 1997. Carina Tertsakian, a researcher in the Africa division of HRW commended "the important role" played by ICTR in bringing those accused of being most responsible for the genocide of Tutsis in Rwanda. According to her, the Rwandese justice system would not have been able to apprehend such senior leaders of the former regime.

"Credible evidence of the crimes committed by RPF soldiers exists. This important part of ICTR's mandate has not been executed." According to the United Nations, the genocide claimed at least 800,000 lives particularly amongst the Tutsis.

But Tertsakian admits that the ICTR has had some weak areas. "We believe one of the main weaknesses of the ICTR is that it has not opened a single case for war crimes committed by members of the former rebel group, the Rwandan Patriotic Front (the RPF is now in power in Kigali) even though this was well within its mandate," she told IPS.

"Credible evidence of the crimes committed by RPF soldiers exists. This important part of ICTR's mandate has not been executed."

In Kigali, genocide survivors have united under a group called Ibuka, which means 'remember' in Kinyarwanda. They give credit to the tribunal for sending a strong message to the architects of the genocide, particularly those still in hiding, but also express some disappointment.

"The ICTR worries them, which is a cause for celebration. But it is not much if you consider the vast means at the tribunal’s disposal," said Naphtal Ahishakiye, Ibuka’s executive secretary. He is dismayed that nine of the accused are still at large, including billionaire Félicien Kabuga who is often referred to as the principal funder of the genocide.

According to ICTR spokesperson Roland Amoussouga, the tribunal has cost 1.6 billion dollars as of Dec. 31, 2011.

Ibuka has also denounced certain judgements. "In a number of cases, the tribunal acquitted defendants or handed down sentences that were too lenient, even where reliable evidence was put before it," said Ahishakiye, who also believes that the ICTR "has contributed practically nothing to Rwandese reconciliation."

The same criticism was made by the Rwandese government on Jun. 21 this year.
ICTR officials have to date refused to comment on these "purely political" criticisms.

Those opposing the new regime in Kigali also have their grievances with the ICTR. The United Democratic Forces (UDF), a party created in exile and which is struggling to get registered in Rwanda, claims that the main failure of the Arusha tribunal is to have not sought the perpetrators of the Apr. 6, 1994 strike on the plane carrying then president Juvenal Habyarimana.

Related IPS Articles

Moving on from Rwanda’s 100 Days of Genocide Not Safe for Rwandan Refugees to Return U.N. Report Links Rwanda to Congolese Violence

"The lack of will to try those responsible for the attack which triggered the genocide is for us a massive failure. It is clear that there was political pressure from some quarters," said Jean-Baptiste Mberabahizi, spokesperson for the party exiled in Belgium. He denounces this as "the justice of the victor over the vanquished."

According to French academic and Great Lakes specialist André Guichaoua, "assessments of the qualitative and quantitative achievements of the ICTR may be mixed, but the tribunal has paved a way forward." He believes that "the prosecutor’s office, judges and their personnel tried the principal architects of the genocide, created jurisprudence and set standards in matters of justice and truth."

Guichaoua, who was the expert witness in several of the ICTR cases recognises that the tribunal "gave priority to the pursuit and trial of the architects of the genocide" of Tutsis.

But, he pointed out to IPS, the lack of legal proceedings for crimes allegedly committed in 1994 by members of the former rebel forces now in power in Kigali "has undermined the credibility (of ICTR), the scope of its rulings, the unveiling of truth and the comprehension of facts."

Guichaoua believes that successive prosecutors of the tribunal, with the consent of the UN Security Council, have all succumbed to Kigali’s stonewalling. For this reason he believes the ICTR’s mission has not been fully accomplished.

The ICTR was scheduled to conclude its mandate at the end of 2008, but its officials requested an extension to the end of 2009. At the end of 2010, the Security Council passed a resolution requiring that all matters be wound up by the end of 2014.

Munyeshaka Case to be Closed by 2014-Report
All Africa
September 2, 2013

_Munyeshaka Case to be Closed by 2014-Report_
All Africa
September 2, 2013

After many years of working on the case of genocide suspect Wenceslas Munyeshyaka's case is expected to be done by 2012 according to an initial report submitted by Mechanism for International Criminal Tribunals (MICT).

The report also says that Munyeshaka's case was making steady progress in this case and that the judicial investigation would soon enter its final phase.

The report was submitted this August and was compiled by Laetitia Husson, the
Officer in Charge of the Initial Monitoring Mission in the Munyeshyaka Case for the MICT.

The report states that those consulted on the case proceeding, like Jean Quintard, Deputy Public Prosecutor at the Tribunal de Grande Instance of Paris, asserted that the judicial investigation in this case could be closed at the end of 2014.

Quintard and his colleagues who carried out the investigation on the case, reported a number of problems faced by the French authorities in this case in the first few years after the referral ordered by the ICTR.

They explained that the severance of diplomatic relations between France and Rwanda between November 2006 and November 2009 made it impossible to carry out investigations during that period and added that the evidence gathered by the ICTR Prosecutor could not be used as such in French law,

The teams also said that witnesses had to be heard again and had problems of physically reaching the scene and examining witnesses scattered around the world, but also noted that they had to go through lengthy procedures to be able to access information in the possession of the ICTR.

The public prosecutors insisted that the Munyeshyaka case, with the case of Laurent Bucyibaruta referred by the ICTR in 2007 and two Rwandan cases where the indictees were remanded in custody, is one of the Unit's top priorities.

Genocide Suspects in UK Set for Extradition Hearing
All Africa
By James Karuhanga
September 4, 2013

The hearing to determine whether five men in custody in the UK can be extradited to Rwanda to face charges over their role in the 1994 Genocide against the Tutsi has been set for October 28.

The suspects, including three former mayors, then called bourgmestres, were arrested in May and their extradition hearing will be held at the Westminster Magistrate's Court in London.

Emmanuel Nteziryayo, from Mudasomwa commune, Charles Munyaneza, from Kinyamakara, and Celestin Ugirashebuja, from Kigoma, all in the present day Southern Province, are contesting Kigali's quest for their extradition.

Others in the same boat are Dr Vincent Bajinya, former head of the National Population Office, and Celestin Mutabaruka, who headed a project called 'Crete Zaire Nil'.

"We are only going to follow up the case in court, hear what is said, but as of now I can't comment," said John Bosco Siboyintore, the head of the Genocide Fugitives Tracking Unit (GFTU).

Although Kigali and London have no extradition treaty, Rwanda has asked that the suspects be extradited under a bilateral arrangement, officials say.

Siboyintore observed that under international law, cases as serious as genocide or complicity to commit genocide do not require an extradition arrangement to be in place saying that "a memorandum of understanding can be considered."

"Under international law, a country has the obligation to either extradite or try suspects of such serious crimes as genocide and crimes against humanity," he said.
Unlike Mutabaruka, the other four—Nteziryayo, Munyaneza, Ugirashebuja and Bajinya, evaded justice for years because of what legal analysts called 'loopholes in the British legal system.'

The quartet was first arrested in 2007, only to be released after two years. Previous refusals to extradite them have been put to test after the International Criminal Tribunal for Rwanda (ICTR), the European Court of Human and People's Rights and other jurisdiction have since said the Rwandan legal system is credible enough to try cases of international nature.

Previously, reluctance to extradite the suspects had been premised on a past decision by ICTR that Rwanda's legal system was not strong enough. Rescinding the ICTR decision followed series of judicial reforms that saw a special chamber for suspects of international calibre, including those referred by ICTR or extradited from other countries, established in Kigali.

Since then, two suspects have been transferred to Rwanda from ICTR custody, while Leon Mugesera (Canada) and Charles Bandora (Norway) were also transferred to Kigali. The ICTR decision was reinforced by the European Court of Human and People's Rights, which Bandora petitioned but the court ruled that the Rwandan judiciary was strong enough to impart fair trial in such cases.

Chad

Jacqueline Moudeïna, Chad
All Africa
August 23, 2013

Jacqueline Moudeïna, a Chadian lawyer and human rights activist, leads the effort to bring to trial the former Chadian dictator Hissène Habré and to achieve justice for his victims.

Habré, president of Chad from 1982 to 1990, is accused of eliminating anyone who threatened his authority. The files of his dreaded political police, recovered by Human Rights Watch, reveal the names of 1,208 people who were killed or died in detention and 12,321 victims of human rights violations. After he was deposed and fled to Senegal, Habré lived in quiet luxury in Dakar for 22 years.

Since 2000, Moudeïna has represented Habré's victims in Senegal, Belgium, and Chad. She put herself at risk by pursuing charges against Habré's accomplices, many of whom are now senior government officials. In 2001, Moudeïna was severely injured in an assassination attempt ordered by a police commissioner she had charged with torture under Habré. Moudeïna was not deterred. Earlier this year she won an important victory when a special court in Senegal indicted the former dictator for crimes against humanity, war crimes, and torture.

Moudeïna's work extends far beyond the Habré case. As president of the Chadian Association for the Promotion and Defense of Human Rights, the leading human rights nongovernmental organization in Chad, she has assumed a prominent role on such issues as prisoners' rights, conditions for child herders, women's rights, and corruption.
As a member of the International Committee for the Fair Trial of Hissène Habré, Human Rights Watch works closely with Moudeïna and Habré's victims, building the factual and legal case against him and campaigning for justice.

Human Rights Watch honors Jacqueline Moudeïna for her commitment to bringing justice to the victims of Hissène Habré and protecting human rights in Chad.

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**Special Court for Sierra Leone (SCSL)**

Official Website of the Special Court for Sierra Leone

**Taylor One Month Away - To Freedom or Total Damnation**

The New Republic Liberia
August 28, 2013

Former charismatic Liberian President Charles Ghankay Taylor who is being prosecuted for war crimes and crimes against humanity at the UN-backed Special Court for Sierra Leone only has month to be declared a freed or condemned man as the Judge of Appeal Chambers of the Court has announced it would deliver judgment by September 27, 2013, which is one month away.

Following close to two years of a breath-taking trial whose outcome produced polarized opinions across the political and legal spectrum, the former President was found guilty for "aiding and abetting" and sentenced to 50 years of imprisonment, but constrainedly took advantage of the appellant process of the court to appeal against the verdict.

During the Appeal Trial which began last year, defense lawyers contextualized witnesses' testimonies and questioned the rationale of the verdict judgment past against the former Liberian leader.

The Appeal Chambers has concluded deliberations and decided to make its findings known by next month, a statement issued by the Outreach and Public Affairs Office of the Special Court said.

"The Judges of the Special Court’s Appeals Chamber announced today that they will deliver their Appeal Judgment in the trial of former Liberian President Charles Taylor on Thursday, 26 September 2013 at 11:00 a.m. local time in The Hague," the statement said.

It may be recalled that on 26 April 2012, the Judges of Trial Chamber II found Mr. Taylor guilty on all counts of the 11-count indictment.

The Judges found unanimously that he had participated in the planning of crimes, and of aiding and abetting crimes, committed by rebel forces in Sierra Leone. On 30 May 2012, the Trial Chamber sentenced him to a term in prison of 50 years.

The Defence has appealed against judgment and sentence on 42 grounds, arguing that the Trial Chamber had made systematic errors in the evaluation of evidence and in the application of law sufficiently serious to "reverse all findings of guilt..."
entered against him" and to vacate the judgment. The Defense also argued that the 50-year sentence was "manifestly unreasonable."

The Prosecution has appealed on four grounds, arguing that Mr. Taylor should have been found individually criminally responsible for ordering and instigating crimes committed by rebels in Sierra Leone.

The Prosecution also asked the Appeals Chamber to reverse the Trial Chamber’s finding that crimes committed in certain areas of five districts fell outside the scope of the indictment, and argued that the 50-year sentence was not "reflective of the inherent gravity of the totality of his criminal conduct and overall culpability" and should be increased to 80 years.

Charles Taylor was tried on an 11-count indictment, alleging (as violations or Article 3 Common to the Geneva Conventions and of Additional Protocol II) acts of terrorism, murder, outrages upon personal dignity, cruel treatment and pillage; (as crimes against humanity) murder, rape, sexual slavery, other inhumane acts and enslavement; (as other serious violation of international humanitarian law) the conscription, enlistment or use of child soldiers.

The Special Court is an independent tribunal established jointly by the United Nations and the Government of Sierra Leone. It is mandated to bring to justice those who bear the greatest responsibility for atrocities committed in Sierra Leone after 30 November 1990.

[back to contents]
Babic is charged, as commander of the Bosnian Serb Army’s military police in Bratunac, with ordering, committing and failing to prevent the imprisonment of non-Serb civilians in the school in May 1992.

Another witness who testified on Monday, Milenko Prodanovic, said that he saw Babic in Bratunac when people from nearby villages were being brought to the town’s stadium as prisoners.

"Everything happening in Bratunac was under the control of the military police of the Yugoslav People’s Army. I did not hear that Babic was deciding the fate of people [detained] in the school, but the [Bosnian Serb Army’s] crisis headquarters headed by Miroslav Deronjic," said Prodanovic.

The Hague Tribunal sentenced Deronjic to ten years in prison in 2003, after he admitted being responsible for the deaths of over 60 Muslims from the village of Glogova in May 1992.

Babic’s trial will resume on September 2.

Zecevic’s defence on Monday asked the appeals court for an acquittal, but the prosecution called for a higher jail sentence for the former police officer from the town of Prijedor who was convicted last year of participating in the mass killings in August 1992.

His defence lawyer, Radovan Stanic, said that two witnesses whose statements established that he participated in the shooting and provided the basis for his conviction should have been called to testify at the trial.

Zecevic’s lawyer also said that the court should take into account a recent ruling by the European Court of Human Rights in Strasbourg that said that the former Yugoslav criminal code should be used in cases of crimes committed before 2003, when Bosnia adopted its own, harsher criminal code.

"It is not clear in Zecevic’s verdict why the criminal code of Bosnia and Herzegovina was applied," said Stanic.

The prosecution however said that it wanted a longer sentence.

"We are appealing because of the incorrect and incomplete establishment of the facts regarding the defendant’s role in the commission of the crime," said prosecutor Slavica Terzic.

The civilians who were killed were detainees who were separated from a larger convoy of Bosniak prisoners by a Prijedor police special response unit, put into buses and taken to the Koricanske cliffs on Mount Vlasic in central Bosnia, where they were lined up and killed so that their bodies fell into the ravine.

At the beginning of the appeals procedure, Zecevic tried to make a plea bargain with the prosecution with a proposed sentence of ten to 13 years, but the appeal court rejected this, saying it was not equal to the gravity of the offence.

Three other people were convicted alongside Zecevic last year and also sentenced to 23 years in jail.
The prosecution witness told the court on Tuesday that she was detained by the Croatian Defence Forces in her hometown of Mostar in August 1992 and taken first to the town’s military infirmary, where she was assaulted, and then to the Dretelj prison camp.

"That morning three of them came to our apartment. They all wore black uniforms and introduced themselves as members of the Croatian Defence Forces," witness Olga Skoro testified.

"My mother-in-law and I were alone; my husband had left Mostar earlier with our children. They told me to bring money and gold and to come with them. They took me in a van to the infirmary in Mostar. This happened on August 3, 1992," she said.

She said she spent three days locked up in the infirmary, where Croatian Defence Forces fighters "beat and molested" her.

"One time they took me out of the room where seven of us were held, brought me to the office and asked me to give them money. As I did not have any to give them, they stripped me naked and humiliated me and threatened they would force me to go home naked," explained Skoro.

Asked by the prosecutor whether she was then raped, the witness replied she was not, but that during her imprisonment in the infirmary in Mostar she saw women being taken out at night and returned at dawn.

Three days later, Skoro and other prisoners were moved from the infirmary to the Dretelj camp, where she was held until October 1992.

"In the hangar, where they put us, there were around 100 women. We slept on a concrete floor and were served food two times a day. We ate from one plate with one spoon, one after another. We mostly did cleaning and washing. They did not beat us in an organised fashion, but in passing they would hit any of us," she recalled.

The defendants at the trial, Ivan Zelenika, Srecko Herceg, Edib Buljubasic, Ivan Medic and Marina Grubisic-Fejzic, are accused of war crimes against several hundred Bosnian Serb civilians imprisoned at Dretelj in 1992.

According to the indictment, Zelenika was an officer with the Croatian Defence Forces, Herceg was the commander of the Dretelj camp, Buljubasic was his deputy, while Medic and Grubisic-Fejzic were camp guards.

All are accused of torturing prisoners and forcing them to do hard labour; several prisoners died as a consequence.

During cross-examination, the witness said she did not know any of the defendants personally, but that she had heard all their names.

"I don’t know what the defendants look like and I cannot tell you whether I saw them in Dretelj or not. I did not know them, but I repeat, I heard about all of them in Dretelj from people who were held there with me," explained Skoro.

The trial is set to resume on September 3.

Goran Saric Sentenced to 14 Years in Prison for Crimes Against Humanity
On August 28, 2013 the Court of Bosnia and Herzegovina found Goran Saric guilty of the charges that, within a widespread and systematic attack against the civilian population in Sarajevo’s Centar municipality, he carried out the expulsion of the entire Bosniak population on ethnic and religious grounds, thus committing the criminal offense of Crimes against Humanity (Article 172(1)h) of the Criminal Code of Bosnia and Herzegovina), specifically by: detention, forced transfer of the population and murder. In that regard, he was sentenced to 14 years of imprisonment, with the time he spent in custody from November 2, 2011 to November 16, 2012 being credited towards his sentence.

Goran Saric was found guilty that, between June 1992 and end-July 1992, within a widespread and systematic attack of the Republika Srpska army, police and paramilitary units on the civilian Bosniak population of Sarajevo’s Centar municipality, knowing of that attack and that his actions constituted part of the attack, as the Head of the newly-formed SJB Centar for the territory of the Serb Municipality of Centar, located within the compound of the hitherto Psychiatric Hospital of Jagomir in Sarajevo, together with members of the Koševno Brigade and paramilitary formations, he carried out the expulsion of the Bosniak population on ethnic and religious grounds.

The Accused Goran Saric was acquitted of charges that in 1992 he deprived of liberty Zahid Pandžić and took him to the Jagomir hospital compound, where the SJB Centar was located, after which Pandžić has been unaccounted for.

Having pronounced the verdict, the Court of BiH issued a decision refusing as ill-founded the Motion of the Prosecutor’s Office to order Goran Saric into custody, instead extending the prohibitive measures, which may last for as long as necessary, but not beyond the moment when the verdict becomes final and legally binding.

Status Conference in Vehid Subotic Case
Court of Bosnia & Herzegovina

August 29, 2013

A status conference before Section I for War Crimes of the Court of Bosnia and Herzegovina in Vehid Subotic case has been scheduled to take place on August 30, 2013 starting at 09:00 hrs in Courtroom 8. At a plea hearing before Section I for War Crimes the Accused Vehid Subotic entered a not guilty plea. On June 24, 2013 the Court of Bosnia and Herzegovina confirmed the Indictment under which the Accused Vehid Subotic is charged with the criminal offense of War Crimes against Civilians. The Indictment, inter alia, alleges that the Accused Subotic, as a member of the 2nd Battalion within the 7th Muslim Brigade of the Army of BiH, during 1993, during the time of war and armed conflict between members of the Army of R BiH and the Croat Defense Council, committed the criminal offense of war crimes against Croat victims in the territory of the Dusina village.

Bosnian Serbs ‘Used Prisoners as Human Shields’
Balkan Transitional Justice

September 5, 2013
The prosecution witness, Hikmet Brkic, told the court in Sarajevo on Wednesday that while he was locked up in the Planjina Kuca detention centre in Vogosca in 1992, Bosnian Serb fighters took him to nearby Zuc hill to act as a human shield.

"We were first held in a pit. You don’t know what’s going to happen. You wait. Some people are taken away. Then a prisoner told us that all of us are going to be taken to be human shields. And then we were carrying the wounded and dead. We were a human target," said Brkic, adding that some camp prisoners were either killed or wounded.

He said that the prisoners were taken to the pit by the defendant in the trial, Branco Vlaco, who told them he was the warden of the Planjina Kuca detention centre.

"He treated me with respect. He did not beat me, but I saw him beat another man," said the witness.

According to the prosecution, Vlaco was the warden of the Bunker, Planjina Kuca, Sonja and Nakina Garaza detention camps in Vogosca, where he established a system to abuse imprisoned civilians.

Prisoners were murdered, tortured and abused, forced to do hard labour and used as human shields. Many of them were killed and dozens are still considered missing.

While being held at Planjina Kuca, the witness said he was taken to do hard labour, and that once Vlaco selected him to go to Zuc hill to dig trenches.

"We did everything, from digging trenches to making underground rooms, we cut wood... You worked like a slave. Whatever someone asked you to do, you had to do it," he said.

Speaking about the conditions at Planjina Kuca, the witness said they were better than at other detention facilities in which he had been held captive before, but that during the four months that he was imprisoned there, he was allowed to bathe only once.

"Vlaco and his guards took us to the river to bathe. But it was not bathing but harassment," he said.

[back to contents]
Bosnian Serb leaders' objectives were carried out.

In the statement, taken from the transcripts of a May 12, 1992 Bosnian Serb assembly session, Mladic said that "we cannot cleanse, nor can we have a sieve to sift so that only Serbs would stay, or that the Serbs would fall through and the rest leave. I do not know how [assembly speaker] Mr Krajisnik and [Bosnian Serb president] Mr Karadzic would explain this to the world. People, that would be genocide."

According to witness Robert Donia, a research associate at the University of Michigan who has testified in several other trials at the Hague tribunal, the Bosnian army chief made the comment after "expressing his concern that civilian leaders were formulating goals that couldn’t possibly be achieved by those who were supposed to implement them".

These goals, known as the "six strategic objectives" of the Bosnian Serb leadership, were adopted at the May 12 assembly session. The first objective was the "demarcation of a [Serb] state as separate from the other two national communities", while according to Donia, the others were geographical in nature, "defining the territory within which the first goal should be achieved".

"[Mladic] repeatedly emphasises that the army can only do so much and the limited possibility of achieving this, both because he felt that Serbs couldn’t rule over areas where no Serbs live and they didn’t have the military wherewithal to accomplish it," Donia said.

Donia said the defendant’s reference to a potential genocide "stands out as a particularly harsh warning against taking these actions and [he is] fearful of the consequences of it. He’s using the word here for its shock value because it doesn’t appear in very many other contexts with this application."

Presiding Judge Alphons Orie interjected, asking whether the comment had been a "warning to the political leadership".

"It was a warning to all Serbs, really," the witness replied.

He said that in his analysis of various sessions of the Bosnian Serb assembly, the word "genocide" is only used twice when referring to something the Serbs might potentially do to others. It occurs 12 times in reference to something that has, or could, happen, to the Serbs themselves, Donia said.

"By consensus, genocide was a dirty word that Serbs were not capable of engaging in and hadn’t engaged in, and [the word] shouldn’t be deployed in discussions that were ongoing," the witness said.

Therefore, Donia said, when Mladic used the word "genocide" it was to assign a "shock value to certain activities he believed were going on, or might go on through the overly ambitious programme that the leadership was advocating".

Prosecutors allege that Mladic, commander of the Bosnian Serb army from 1992 to 1996, is responsible for crimes of genocide, persecution, extermination, murder and forcible transfer which "contributed to achieving the objective of the permanent removal of Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory".

The genocide charge relates to the massacre of more than 7,000 men and boys at Srebrenica in July 1995.

Mladic is also accused of planning and overseeing the 44-month siege of Sarajevo
that left nearly 12,000 people dead.

He was arrested in Serbia in May 2012 after 16 years on the run.

Donia said that while Bosnian Serb president Radovan Karadzic got along well with his top civilian deputies – Momcilo Krajsnik and Nikola Koljevic in particular – "that level of cohesiveness did not exist with Mladic".

"The three political leaders often met informally and scripted what was going to happen, and believed it was their duty to set goals, to prescribe policies, and that it was General Mladic's duty to carry them out," Donia said.

"Did that happen?" asked prosecuting lawyer Camille Bibles.

"Yes, it did in the main. A great deal of heat was generated between them about these policies. In particular in assembly sessions, these clashes became quite pronounced. But looking at the overall policy implementation, Mladic did carry out those policies," the witness replied.

"Was there any misunderstanding as to what was expected of Mladic?" Bibles asked.

"I don't have any evidence that he didn't understand what the orders were," Donia said.

During the cross-examination, Mladic’s lawyer Branko Lukic challenged Donia’s credentials as an expert witness.

"So you are not a political scientist and you don’t have any training in that field?" Lukic asked him.

"I am not a political scientist," Donia confirmed. Lukic then asked the witness to confirm that he was not an anthropologist, a sociologist, a psychologist, a demographer, a statistician, a lawyer or a military expert.

Noting that Donia worked for the financial company Merrill Lynch from 1981 to 2000, he asked him whether he worked there full time. Donia said that he did.

"Did you ever receive a salary as a historian?" Lukic asked.

"As a professor of history and instructor of history, yes I did," Donia replied.

"How many years would that be, if we look at your entire career?" the defence lawyer asked.

"I don't know, around six or seven perhaps, altogether," Donia said.

The trial continues next week.

Croatian Serb Leader Evaded Responsibility for Crimes- Witness
Institute for War and Peace Reporting
By Velma Saric
August 23, 2013

During the war in Croatia, local Serb leader Goran Hadzic would typically deny crimes or claim they were committed by forces not under his control, a former United Nations military observer told the Hague tribunal this week.

The prosecution witness, General John Wilson, was a senior UN military liaison officer in the former Yugoslavia from January to March 1992 and chief military
At the outset of his testimony, Wilson told the chamber that he was required to attend a number of meetings with the political and military leadership of "all the involved parties." That included Hadzic, who was president of the Serb breakaway region in Croatia known as the Republic of Serb Krajina, or RSK.

"I remembered Hadzic reacting to reports of crimes in different ways," Wilson said, "but I also remember that he would usually either deny knowing anything about them, or claim that these crimes were committed by individuals who were out of effective control."

Hadzic is charged with 14 counts of war crimes and crimes against humanity committed against Croats and other non-Serbs during the war in Croatia in the early 1990s, including persecution, extermination, murder, imprisonment, torture, inhumane acts, cruel treatment, deportation, wanton destruction and plunder. He is alleged to have been part of a "joint criminal enterprise" with other political and military officials, whose purpose was the "permanent forcible removal of a majority of the Croat and other non-Serb population from approximately one-third of the territory of the Republic of Croatia" in order to create a Serb-dominated state.

During the conflict, Hadzic held senior political positions in Serb-held parts of Croatia. He was head of the government of the self-declared Serbian Autonomous District of Slavonia, Baranja and Western Srem, known as SAO SBWS; and was president of RSK – which absorbed the autonomous district – from February 1992 to December 1993.

Wilson said that in his opinion, the defendant had effective authority in Krajina. The police, for example, were formally under the jurisdiction of RSK interior minister Milan Martic, but were "effectively" working for Hadzic, the witness said.

Wilson added that Hadzic "gave the impression" of being completely loyal to then Serbian president Slobodan Milosevic. The witness said that both Milosevic and Hadzic argued that any "activity of forces on the ground" was often a response to "Croatian provocations".

The witness said that Hadzic seemed to support the idea that areas under RSK control could never rejoin Croatia, and that there was "no chance" that Croats and Serbs could live together. But he added that Hadzic was not an "active proponent of clearing the RSK of its non-Serb inhabitants by force".

Wilson said he got the impression that the special police forces in RSK were at the "heart of the problem" and responsible for crimes that were committed." To him, the term "special police" referred to "any police forces that were present on the battleground and involved in combat activities".

These special police forces were a source of "problems for the deployment of [UN peacekeeping forces] on the ground in Krajina", Wilson continued.

In the course of his testimony, Wilson also noted that the UN’s position in RSK-controlled territory was dependent on the local authorities and on their will.

During cross-examination, Hadzic’s defence lawyer Christopher Gosnell reminded the witness that in his own reports to Lord David Owen – the author of the peace plan which provided for the demilitarisation of local Serb forces – he suggested that there was a role for local authorities and that they should remain until the UN peacekeeping forces known as UNPROFOR were fully deployed, and possibly even afterwards.
The witness confirmed that he had felt there were "legitimate military reasons for the Serbs to keep their own forces once UNPROFOR was deployed".

However, he pointed out that part of the reason why UNPROFOR was so challenged on the ground was that local authorities in RSK did nothing to support the peacekeepers or to ease tensions.

"UNPROFOR quite obviously wasn’t able to help the local population. The situation was unsafe and the atmosphere was one of fear, and there was no effort by the local police to stop or prevent this," Wilson said.

The trial continues next week.

Hague Judges Deny Karadzic Twin Trials Request
Institute for War and Peace Reporting
By Rachel Irwin
August 23, 2013

Judges at the Hague tribunal have denied Radovan Karadzic’s request to sever the first count of genocide from the other ten counts in his indictment.

The first count is a charge of genocide relating to seven Bosnian municipalities, but not to Srebrenica, for which there is a separate count of genocide whose presence in the indictment has not altered and which is unaffected by changes to Count 1.

Karadzic was acquitted of Count 1 in June 2012, as a result of a process known as "98 bis", which occurs at the conclusion of the prosecution’s case. According to this rule, if there is no evidence capable of supporting a conviction, judges can acquit a defendant of one or more counts in the indictment before the defence case begins.

Karadzic began his defence case in October 2012, and because Count 1 had been dropped from the indictment, he did not present witnesses to defend him against it.

On July 11 this year, however, appeals judges reinstated the first count of genocide, arguing that trial judges had been wrong to conclude that there was insufficient evidence to support a possible conviction.

When Count 1 was reinstated, Karadzic presented the argument that this genocide count must be severed from the rest of the case, on the grounds that "proceedings under Count 1 may be long and complex and could delay the ongoing trial".

After considering this point, trial judges ruled against it on August 2, stating that "holding a second, separate trial on Count 1 alone would create an unnecessary burden on victims and witnesses, who would have to return to the tribunal to give additional and wholly repetitive evidence".

In addition, they said, "there is no indication at this stage that completing these proceedings with Count 1 reinstated as instructed by the appeals chamber would make the proceedings unmanageable".

When appeals judges overturned Karadzic’s acquittal on Count 1, Karadzic asked them to clarify what they meant when they "remanded the matter to the trial chamber for further action consistent with this judgement". He argued that this meant the trial chamber was supposed to decide on the matter anew.

The appeals chamber declined to provide a clarification, stating that this would be "inappropriate". And in its August 2 decision, the trial chamber stated that it regarded the appeals judgement as "unequivocal" and that it had been "simply
instructed to take necessary and appropriate action with regard to the defence case, with Count 1 having been reinstated". Karadzic is now appealing against this part of the August 2 decision, arguing that the trial chamber has "failed to comply with the instructions of the appeal chamber".

Also on August 2, the trial chamber granted another request that Karadzic had made separately, seeking a postponement of his ongoing trial. But they allowed him only two months’ additional preparation time instead of the four months he asked for. That means his defence case will resume on October 28.

Diplomat on Hadzic as "Convincing" Croatian Serb Leader
Institute for War and Peace Reporting
By Velma Saric
August 30, 2013

A German diplomat has told the Hague tribunal how Croatian Serb leader Goran Hadzic was adamant that the Krajina region would never "voluntarily" be part of Croatia.

From 1992 to 1996, Geert-Hinrich Ahrens, appearing this week as a witness for the prosecution, served as ambassador-at-large at the Geneva Conference on the Former Yugoslavia. As he told the court, he met the accused on a number of occasions, particularly at meetings on "ceasefires and peace accords", where Hadzic attended as "a representative of the Serbs in Croatia."

During the 1991-95 war in Croatia, Hadzic held senior political positions in Serb-held parts of the country. He headed the government of the self-declared Serbian Autonomous District of Slavonia, Baranja and Western Srem; and was subsequently – from February 1992 to December 1993 – president of the Republic of Serb Krajina (RSK) after it absorbed the autonomous district. He is charged with 14 counts of war crimes and crimes against humanity committed against Croats and other non-Serbs, including persecution, extermination, murder, imprisonment, torture, inhumane acts, cruel treatment, deportation, wanton destruction and plunder.

Ambassador Ahrens said he developed a "a very tight relationship and close friendship" with Yugoslavia and its people after he was posted to the West German embassy in Serbia in 1972. "Whenever I went to Yugoslavia, I truly felt at home with all the people around me," he said, describing how the conflicts of the early 1990s pained him.

Turning to the position of the Serbs in Croatia, Ahrens said they saw themselves as a "separate nationality of their own within Yugoslavia, and without any relation to Croatia, politically or otherwise". They felt they should be allowed to join Serbia, to which they belonged "politically and culturally".

Ahrens said that on one occasion, Hadzic told him that "the Krajina Serbs would be ready to pay the price for their freedom, even if it meant war", and that RSK would never "voluntarily become a part of Croatia".

He said that that while Hadzic himself, "advocated that position in many ways", this was nevertheless "rather obviously not a position he personally identified closely with. He seemed to be repeating this idea that had come from somewhere else."

Ahrens said that while Hadzic appeared to take a pragmatic and reasonable stance, he rarely took the kind of action needed for the RSK authorities to fulfil their obligations.

The witness gave one example where the defendant met him "asking me to help him with the establishment of a constitutional framework and [with] the protection
of human rights in the RSK. I told him that in such a situation, the protection of human rights is of extreme importance."

"Hadzic agreed, but never did anything about it in real life," Ahrens added.

He said that Hadzic failed to publicly condemn atrocities committed against non-Serbs in RSK even though he was "quite certainly informed" of such cases.

Ambassador Ahrens told the court that Hadzic appeared to be "a very convincing leader", an impression strengthened by a round of negotiations he attended in 1993, at a time when the Croatian army was beginning to get the upper hand over Krajina Serb forces.

"He still seemed convinced that his position was right and that while the Croats would have a state of their own, so would the Serbs," Ahrens said. "I remember Hadzic mentioning that in case [Krajina Serbs] fell under attack from Croatia, then the Croats should better get ready to evacuate Zagreb."

The witness said Hadzic’s statements seemed "very convincing", and that he was sure the Krajina Serbs had the military force to back them up.

Cross-examining the witness, Hadzic’s defence council Christopher Gosnell put it to him that the defendant was unable to prevent crimes in RSK "because the Krajina Serbs were implementing the Vance peace plan".

This plan, proposed by American politician Cyrus Vance and signed by Croatian president Franjo Tudjman and Serbia’s Slobodan Milosevic in November 1991, led to four United Nations protected areas being established in RSK. The plan called for the withdrawal of the Yugoslav army from Croatia, the demilitarisation of local Serbs, and the return of refugees to their homes in protected areas.

Gosnell argued that demilitarisation of the Krajina Serbs meant "reducing their ability to deal with crimes and preventing them".

Ahrens said that he was unable to say whether the Serb side was "in a position to prevent crimes or not", but that it was clear that atrocities were being committed by people on that side.

Under cross-examination, the witness said that Hadzic seemed "accessible as a person and, unlike some other Serb leaders, actually listened to proposals from the other side".

He added that while Hadzic believed every nation should have its own state, he "never explicitly said that Serbs and non-Serbs should be separated by force".

The trial continues next week.

Uncertainty Over Seselj Case After Judge’s Removal
Institute for War and Peace Reporting
By Rachel Irwin
August 30, 2013

A Danish judge at the Hague tribunal has been disqualified after a panel of his peers found that an email which he sent out to personal contacts and later appeared in the press "demonstrated bias".

Because Judge Frederik Harhoff sat on the bench in the long-running war crimes trial of Serbian nationalist politician Vojislav Seselj, the most immediate impact of his disqualification will be on that process. With the trial concluded, judgement is scheduled for October 30, but that date and indeed the whole case are now in flux.
The tribunal’s vice-president, Judge Carmel Agius, will have to decide how to proceed in light of Judge Harhoff’s disqualification. Legal experts say the options include assigning a replacement judge, ordering a new trial, or throwing out the case entirely on the grounds that the process was flawed.

"This is a nightmare scenario on so many levels," said Luka Misetic, a defence lawyer who represented Croatian general Ante Gotovina at the tribunal.

The trouble began in June, when Judge Harhoff’s now infamous email was leaked to the Danish media. In it, he criticises the controversial acquittals of Gotovina and his co-accused Mladen Markac, former Yugoslav army chief Momcilo Perisic, and Serbian intelligence officials Jovica Stanisic and Franko Simatovic.

The letter, emailed to 56 contacts, also alleges that the Hague tribunal’s president, American judge Theodor Meron, applied "tenacious pressure" to colleagues in a way that "makes you think he was determined to achieve an acquittal" for Gotovina and Perisic.

"The latest judgements here have brought me before a deep professional and moral dilemma not previously faced," the email said. "The worst of it is the suspicion that some of my colleagues have been behind a short-sighted political pressure that completely changes the premises of my work in my service to wisdom and the law."

Shortly after the letter became public, Seselj - who represents himself - filed a request for Judge Harhoff to be disqualified from continuing with his case.

A three-judge panel was specially appointed to consider Seselj’s application, and on August 28, the majority of found that Judge Harhoff had "demonstrated a bias in favour of conviction such that a reasonable observer, properly informed, would reasonably apprehend bias", and that the "presumption of impartiality has been rebutted".

Judge Meron excused himself from dealing with the matter, so it is tribunal vice-president Judge Agius who must decide how to proceed in the Seselj case.

The limited options available are compounded by the fact that Seselj has already been in custody for ten years.

He was tried for nine counts of war crimes and crimes against humanity, for atrocities carried out in an effort to expel non-Serbs from parts of Croatia and Bosnia between August 1991 and September 1993.

His trial was supposed to start in 2006, but was postponed for nearly a year after he went on hunger strike. When proceedings finally got under way in November 2007, they were delayed for long periods at a time. Simultaneously, Seselj has been tried and convicted of contempt of court three times for revealing personal details of protected witnesses.

According to lawyer Misetic, Judge Harhoff’s removal from the case means that Seselj "does now have a legitimate claim to violation of his right to a speedy trial".

"Before, you could say it was his own delay tactics. Now he can say, 'You gave me a judge that was biased and you can't hold me another 18 months or two years because of the mistake that you all made,'" Misetic said.

Dov Jacobs, assistant professor of international law at Leiden University in The Netherlands, says it is likely that Seselj will file a motion claiming "abuse of process" in order to have the case thrown out entirely.
"The logic would be that the trial is over and Seselj goes free. Any reasonable standard of fair trial and due process would mean that if a trial breaks down after ten years, it would be completely unfair to start over," Jacobs said.

In addition to questions of fairness, Misetic said, the prospect of holding a brand-new trial would be "horrible".

"Trying to explain that to the [United Nations] Security Council is almost inconceivable. His right to a speedy trial would certainly be violated," the lawyer said. "They can’t in any way, shape or form have a case that’s going to last 15 years. To me that’s not a possibility. They are either going to name a new judge or dismiss the charges. I don’t see a third option at this point." Tribunal rules state that a judge can be replaced if he or she is found to be biased. But a situation where a judge is disqualified two months before judgement is due is unprecedented. Naming a new judge would almost certainly delay proceedings once again, possibly for a long time.

"Even if tomorrow you appoint a new judge, that judge is going to have to claim to have at least read every transcript of the trial or watched every video of the proceedings. So extrapolate out how much longer that will take. It would probably take a judge at least a year to do that," Misetic said.

The conclusion that Harhoff demonstrated bias may also have serious implications for other cases.

Lawyers for former Bosnian Serb police official Mico Stanisic – who was sentenced to 22 years in prison this March by a panel that included Judge Harhoff – have already asked to enter the letter as new evidence during the appeals process.

In June, lawyers for the widow and children of deceased Bosnian army commander Rasim Delic requested that his conviction be "revised" on the grounds that Judge Harhoff was one of the judges on the bench.

Delic had appealed against the three-year sentence he received in 2008 for failing to prevent or punish the cruel treatment of Serb prisoners, as commander of wartime Bosnian government forces. A hearing was held in January 2010, but Delic died in April that year before judgement could be rendered. The appeals process was then terminated completely, despite objections from his lawyers.

In their June submission, lawyers argued that Judge Harhoff’s "lack of impartiality and integrity" was a new fact "which could have been a decisive factor in reaching the decision to convict Delic".

"The publication of Judge Harhoff’s letter has unilaterally brought the reputation of the tribunal into significant disrepute and risks losing public confidence in the tribunal’s work," the lawyers wrote. "It is therefore the responsibility of the appeal’s chamber to rectify the fallout committed as a result of Judge Harhoff’s appearance of bias. The only way to rectify this situation would be to issue the appeals judgement in this case, or to quash the trial judgement."

The motion is now with the appeals chamber.

Karadzic Loses in Challenge to Appeals Process
Institute for War and Peace Reporting
By Rachel Irwin
August 30, 2013

Judges at the Hague tribunal have rejected a request from former Bosnian Serb president Radovan Karadzic to dismiss the indictment against him.
Karadzic, who is representing himself, based the argument for his request around the Mechanism for International Criminal Tribunals (MICT), the institution which will replace the Hague tribunal when it closes. Should he be convicted of the charges against him, any appeal would be handled by the MICT, not by the tribunal itself.

In his July 1 motion, the defendant argued that the United Nations Security Council lacked the jurisdiction to set up the MICT, that consequently "there is no legal entity to which Dr Karadzic can appeal", and that the indictment "must be dismissed".

Judges disagreed, stating that the MICT had been given a mandate to "conduct all appellate proceedings" after July 1, 2013. The MICT, they said, is required to interpret its founding statute "in a manner consistent with the jurisprudence" of both the Hague tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, whose appeals cases it will also handle.

"The chamber is satisfied that the accused will have the right to appeal the judgement to be rendered by this trial chamber to a legally-constituted tribunal, and does not consider that there is any uncertainty in that regard," presiding Judge O-Gon Kwon wrote in the decision.

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**Domestic Prosecutions In The Former Yugoslavia**

**Yugoslav Colonel Convicted of War Crimes in Slovenia**

*Balkan Insight*

August 27, 2013

*A Slovenian court convicted retired Yugoslav People’s Army colonel Berisav Popov of war crimes during the brief conflict in the country in 1991 and sentenced him to five years in jail.*

The court in the town of Murska Sobota on Monday found retired colonel Popov guilty of killing a civilian and destroying property during the brief Yugoslav People’s Army campaign in the Slovenian towns of Radenci and Gornja Radgona in 1991, sentencing him in his absence to five years in prison.

Yugoslav People’s Army general Vlado Trifunovic, who was charged alongside Popov, was acquitted.

The prosecution filed an indictment against two men in April 2008, accusing them of killing two civilians then destroying state property in four Slovenian towns and of looting and robbing other properties.

Because both men live in Serbia, they were prosecuted in absentia.

Trifunovic and Popov were also sentenced in absentia by Croatian courts in 1993 to 15 years in jail for crimes against civilians in the town of Varazdin.

In Serbia meanwhile, the two high-ranking officers were convicted of treason and "the delivery of weapons and military equipment units to the enemy" by a military court in Belgrade in 1994.
According to Trifunovic, at the beginning of the conflict in Slovenia in 1991, he managed to save the 280 Yugoslav Army soldiers in the unit that he commanded in Varadzin by surrendering a military barracks, along with its weapons, to Croat forces.

Commenting on the verdict, Trifunovic told media at the time that he was the only person that "Croatia sentenced for war crimes, while Yugoslavia sentenced for not committing a crime".

In 2010, a Serbian court quashed the 1994 verdicts against both men, ruling that Trifunovic acted in "extreme necessity" when withdrawing from Varazdin.

What became known as the ‘Ten-Day War’ broke out in Slovenia on June 27, 1991, after Ljubljana declared independence two days earlier. The fighting saw Slovenian territorial defence forces battle the Yugoslav People’s Army until July 7, 1991, when the Brijuni Accords which ended the conflict were signed.

**Sarajevo Police Chief Jailed For War Crimes**

**Balkan Insight**

August 28, 2013

Former local Serb police chief Goran Saric was jailed for 14 years for crimes against Bosniak civilians who were taken prisoner in the Sarajevo settlement of Nahorevo in 1992.

The court in Sarajevo on Wednesday ruled that Saric, a former chief of police in the wartime Serb municipality of Centar, was guilty of sending some of the detained civilians to prison camps, and others to their deaths.

On June 16, 1992, the court found, Bosniak men from the Nahorevo neighbourhood were told to go to the local community centre, where they were surrounded and taken to the Jagomir psychiatric hospital in Sarajevo and imprisoned.

Six days later, Saric divided the men into three groups: the first group of more than 60 prisoners was sent to Bosnian Army-controlled territory to be freed, while the second group of 29 was sent to Serb detention camps in Vogosca near Sarajevo.

The police chief left third group of men, who were labelled potential troublemakers, at the psychiatric hospital, "knowing they were going to be killed", said presiding judge Mira Smajlovic.

A group of 11 prisoners was later executed in the Skakavac area near the capital.

Smajlovic said that witnesses’ testimony about how Saric identified and conducted himself had been crucial to the guilty verdict.

"Some said he openly introduced himself as ‘Saric’, while others said he behaved like a chief," the judge explained.

Saric however was acquitted of a part of the indictment which charged him with forced disappearance of a man who disappeared without trace on June 14, 1992.

While deciding on the sentence, the court took into account Saric’s good behaviour in the courtroom, the fact that he has a family, and that he released some of the prisoners.

During the trial, Saric had claimed that he was innocent.

"I feel sorry for all the people who got killed, but I believe that I did not contribute..."
anything to their deaths," he said in his last statement to the court in June.

The verdict can be appealed.

**Convicted Sarajevo Policeman Arrested Over Srebrenica Killings**

**Balkan Insight**

August 30, 2013

**Former Bosnian Serb police officer Goran Saric was arrested for his alleged involvement in the Srebrenica genocide, a day after being convicted of committing war crimes in Sarajevo.**

Saric was arrested on Thursday on suspicion that he was in charge of police units which were operating around Srebrenica in July 1995 and were involved in the capture and murder of Bosniak men and boys from the enclave.

His arrest came a day after he was sentenced to 14 years in jail for sending several dozen detained civilians to prison camps and others to their deaths in Sarajevo in 1992.

In the new charges, Saric is accused, as the commander of the Bosnian Serb interior ministry’s special police brigade, of knowingly aiding the joint criminal enterprise that was responsible for the killings of some 7,000 Muslim men and boys from Srebrenica.

He is accused of acting together with other army and police units, all the while knowing the main perpetrators’ deadly intent.

The prosecution alleged that Saric issued an order to policemen to watch over the Bratunac-Konjevic Polje road and capture several thousand Bosniak men and boys who tried to leave the UN-protected ‘safe zone’ of Srebrenica through the woods. The escapees were shot at when they fled.

The men were ordered to surrender, but even after they complied, they were not given medical treatment, even though some were seriously wounded. Instead, they were stripped of personal belongings, and members of the special police brigade’s Jahorina squad executed 15 to 20 of them at a house in the village of Sandici.

After that, members of the special police brigade’s Sekovici squad took several hundred prisoners to agricultural warehouses in the village of Kravica, where around 1,000 more of them were executed.

After the executions, members of the Jahorina squad tricked the survivors into coming out of the warehouses by promising them they would be treated; after around a hundred survivors came out, they were also killed.

Policemen then resumed bringing in and executing captured Bosniaks from Srebrenica.

**Severed Head Seen in Bosnia School Jail**

**Balkan Insight**

September 3, 2013

**A witness at the war crimes trial of ex-Bosnian Serb military policeman Savo Babic said he saw a severed human head at a primary school where he was imprisoned in 1992.**

The protected witness codenamed ‘S-1’ told the court in Sarajevo on Monday that
he saw a lot of beatings and murders at the Vuk Karadzic primary school in the town of Bratunac, where he and other Bosniaks were held captive by Serb forces in 1992.

"In the toilet, the blood came up to the ankles. I saw a severed human head," said S-1.

He said that before being locked up in the school, he was first taken to a stadium in Bratunac along with his family and other Bosniak civilians.

"By the road, on a tree stump, there was a skull with a wig, and a bloody hatchet in it," he recalled.

In previous testimony, S-1 said he saw the defendant Savo Babic at the Vuk Karadzic primary school twice. Babic is charged, as commander of the Bosnian Serb Army's military police in Bratunac, with ordering, carrying out and failing to prevent the imprisonment of non-Serb civilians in the school in May 1992.

According to the indictment, over 400 civilians were locked up at the school, several dozen of whom were murdered or died due to the conditions in the school, while others were beaten. The trial will resume on September 9.

Kosovo War Crimes Suspects Freed From House Arrest
Balkan Insight
September 3, 2013

Former Kosovo Liberation Army commander Fatmir Limaj, on trial with nine others for allegedly torturing Albanian and Serb detainees, has been released ahead of the upcoming verdict.

As the retrial of ex-commander turned politician Limaj for alleged abuse of prisoners at the Klecka wartime jail in Kosovo nears its end, the court released him from the house arrest imposed in June over fears that he and the other defendants might abscond or interfere with witnesses.

"The measure of reporting at a police station twice per week is ordered for the defendants. Furthermore, the defendants are not allowed to leave Kosovo until further order from the presiding judge," the EU rule-of-law mission EULEX, which is prosecuting the case, said in a statement.

Tome Gashi, the defence lawyer for Limaj, described the decision as "good news".

"It might come ahead of a positive verdict expected to be given on September 17," he said.

Ex-KLA commander Limaj, now a lawmaker with Kosovo’s ruling Democratic Party, was acquitted of the same charges in May last year but the prosecution successfully appealed against the verdict and the case was sent for a retrial.

According to the indictment, Limaj and the other co-defendants, also former KLA fighters, "violated the bodily integrity and health of an unspecified number of Serb and Albanian civilians and Serb prisoners of war held in a detention centre in the village of Klecka".

Prisoners were held in "inhumane conditions, which included keeping prisoners chained, cold and hungry, in unsanitary conditions, with frequent beatings", the indictment said.

Srebrenica Genocide Suspects Face Trial in Serbia
Balkan Insight
Two people suspected of involvement in the 1995 Srebrenica massacres will be tried in Serbia, in an unprecedented cooperation between the Sarajevo and Belgrade prosecutors.

The case against the two unnamed suspects will go ahead in Serbia after Sarajevo prosecutors told their Belgrade counterparts that they had Bosnian victims’ consent to proceed.

The suspects are "located on the territory of Serbia", the Bosnian prosecutor’s office said after a meeting with Serbian prosecutors in Belgrade on Friday.

A prosecution source told BIRN that charges had already been filed, but declined to give more details about the case.

However the only case related to the Srebrenica massacres which has seen an indictment raised but has not yet reached the courts is against two former police officers, Nedeljko Milidragovic and Aleksa Golijanin.

Because both have Serbian citizenship and live in Serbia, Sarajevo couldn’t prosecute them because Belgrade does not extradite its citizens.

But after Belgrade and Sarajevo signed a landmark protocol to cooperate in the prosecution of war crimes suspects in January this year, the men can now be prosecuted in Serbia on charges filed by Bosnia.

According to the charges filed by the Bosnian prosecution, Milidragovic, a former commander of a squad from the Bosnian Serb police special brigade's Jahorina Training Centre of the Special Brigade with Republika Srpska police, and Golijanin, a former deputy commander of a Jahorina Training Centre squad, committed genocide against Bosniaks from Srebrenica between July 10 and July 19, 1995. The prosecution accuses Milidragovic of killing a disabled Bosniak man during a search of the Potacari area near Srebrenica on July 12 and then taking a group of 15 to 20 men away from their families and killing them in a nearby meadow. He is also charged with ordering the shooting of about 100 Srebrenica captives in the village of Kravica.

Golijanin meanwhile is accused of participating in the capture of several thousand Bosniaks.

[back to contents]
In a memo issued on 22 August 2013, the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia announced an adjusted schedule for closing submissions in Case 002/01.

The deadline for written Closing Briefs by the parties is now extended by one week to 19 September, as the chamber has admitted into evidence about 2,000 more documents since it confirmed the original schedule on 24 July. The hearing of oral Closing Statements is revised to begin on 16 October at 9 am, instead of the previously scheduled date of 9 October.

The hearing of closing statements is expected to continue every day except for public holidays during the latter half of October (16, 17, 18, 21, 22, 24, 25, 28, 30 and 31 October) where the parties will make their presentations in the following order:

- Lead Co-Lawyers for Civil Parties make final statements (up to 1 day)
- Co-Prosecutors make final statements, including a request for sentencing (up to 3 days)
- Nuon Chea's Defence lawyers/the Accused make final statements (up to 2 days)
- Khieu Samphan's Defence lawyers/the Accused make final statements (up to 2 days)
- Lead Co-Lawyers and Co-Prosecutors make rebuttal statements (up to 1 day)
- Nuon Chea and his lawyers and Khieu Samphan and his lawyers make final statements (up to 2 hours each team, total 4 hours)

The chamber advises that the final statements may be completed earlier than the 31 October, as the parties are required to begin their oral submissions immediately following the close of the previous party’s submissions.

Most Cambodian staff at the U.N.-backed Khmer Rouge trial have gone on strike over unpaid wages.

Nearly 200 of the 250 staff members did not show up for work Monday in Phnom Penh to protest several months of unpaid wages.

A court spokesman says the tribunal faces a $3 million budget shortfall and staff have not been paid since June.

Citing concern over a possible disruption to the judicial process, U.N. spokesman Lars Olsen called for the Cambodian government to live up to its obligations.

"The U.N. continues to call upon the royal government of Cambodia to meet the obligation to pay the salaries, which they have failed to do since May," he said. "It is the responsibility of the royal government to pay this salary. And we are very concerned about the impact this strike might have on the judicial process and we are also concerned about the welfare of the national staff and their families."
Last week, Cambodian government spokesman Ek Tha appealed to the international community to provide more funds, saying Phnom Penh has paid enough.

The court has faced several funding problems since its founding in 2006, including a staff strike over unpaid wages in March of this year.

The court was set up to prosecute the top leaders of the Khmer Rouge regime, which is blamed for the deaths of nearly two million Cambodians during its bloody rule four year rule in the late 1970s.

The court has only handed down one conviction, and the advanced age of the remaining defendants has cast doubt on the prospects finishing its job while they are still alive, or able to participate in their trials for war crimes, genocide and crimes against humanity.

Nuon Chea and Khieu Samphan, both in their 80s, are the only senior Khmer Rouge leaders alive and considered fit to stand trial. They deny the charges. The group's leader, Pol Pot, died in 1998, and co-founder Ieng Sary died earlier this year.

Former Khmer Rouge prison chief Kaing Guek Eav, better known as "Duch," was sentenced last year to life in prison for his role in killing more than 14,000 while running the Tuol Sleng torture and execution center in Phnom Penh.

The government of Japan could allow the Cambodian side of the cash-strapped Khmer Rouge tribunal to spend some of its contributions to the international side of the court, officials said Tuesday.

The announcement comes a day after some 200 Cambodian staff at the UN-backed court went on strike over the absence of pay. A tribunal spokesman said Tuesday the striking staff have yet to return to work.

The Cambodian side of the court is short some $2.9 million for operations and has been dogged since the tribunal's 2006 inception with allegations of mismanagement, corruption and kickbacks. Cambodian staff, including judges, have not been paid since May, court officials said.

"Japan might allow the Cambodian side to take some of its $3 million contribution to the UN side," Ek Tha, a spokesman for the Council of Ministers, said Tuesday, following talks between Cabinet Minister Sok An and Japanese Ambassador Kumamaru Yuji. "This is to ensure the operation of the [tribunal] without any suspension."

The Defence Support Section (DSS) of the Extraordinary Chambers in the Courts of Cambodia (ECCC) notes the death, on August 15, 2013, of Mr. Jacques Verges, International Co-Lawyer for the Accused Mr. Khieu Samphan. Mr. Verges died in France at the age of 88 after a long career in criminal defence, representing numerous high-profile clients around the world.

Mr. Verges had represented Mr. Khieu Samphan since November 2007, when the
accused was placed in provisional detention at the ECCC. In recent years, Mr. Verges was not often present at the ECCC. Mr. Khieu Samphan continues to be represented by International Co-Lawyers Ms. Anta Guisse and Mr. Arthur Vercken, both of France, and by Cambodian Co-Lawyer Mr. Kong Sam Onn, assisted by a team of Cambodian and foreign legal professionals.

The DSS takes this opportunity to express its condolences to Mr. Verges' family and to acknowledge with gratitude his contribution to the judicial process before the Extraordinary Chambers in the Courts of Cambodia.

Tribunal Walkout a Worrying Sign Analysts Say
VOA Khmer
By Sok Khemara
September 4, 2013

This week's walkout of some 250 Cambodian staff at the UN-backed Khmer Rouge tribunal has raised new questions about the funding obligations of the international community and the Cambodian government. But tribunal observers say the court's funding is the joint responsibility of each, as the court continues to pursue only its second trial to date.

"I think the donors and the international community and the Cambodian government need to decide whether they are going to fulfill their financial obligations to ensure that all pending cases which are now open at the court proceed to their judicial conclusion," James Goldston, executive director of the Open Society Justice Initiative, told VOA Khmer by phone on Tuesday. "The tribunal was set up to render justice. Cases have been launched. It would be a tragedy if those cases could not be completed because adequate financing was not secured."

Cambodian staff have not been paid on their half of the court since May, prompting a walkout of staff this week. The Cambodian side of the court is short nearly $3 million for operations, but it has faced ongoing allegations of mismanagement and corruption as the hybrid court tries senior Khmer Rouge leaders for their responsibility for atrocities committed by the regime.

Goldston said the question now is whether there is enough "political commitment" to continue funding the court.

"I think the work stoppages, which is what we are seeing at the court, are evidence of the extremity of the problem, and there is a need for donors and for the Cambodian government to face up to their responsibility, to finish what they started," he said. "If ultimately funds are not secured to allow the existing Case 002 to be completed, or other cases which are in the investigation stage, to reach their judicial conclusion, that would be a profound failure, and that would be a terrible signal to all the victims of the crimes which are at issue in this court, and it would unfortunately be a setback for international justice, I think, for the principle of accountability for grave crimes."

Nushin Sarkarati, a legal official at the Center for Justice and Accountability, said the walkouts are not within the control of the Cambodian government or the UN, but "what is within their control is the management of the court's budget and the salaries of the staff."

"The UN and the Cambodian government made a commitment to the victims and the international community that senior leaders and persons most responsible for Khmer Rouge-era atrocities would be put to trial," she said in an e-mail. "Both the UN and the Cambodian government must ensure that the court has all the tools it needs to execute this commitment."
The strikes are preventing the case against senior leaders Nuon Chea and Khieu Samphan from moving forward, she said. "The Cambodian staff is essential to the operation of the court. Without the staff, the court is forced to postpone the hearings, which in turn delays the sentencing of the two accused on trial."

Peter Maguire, a Khmer Rouge researcher and author of "Facing Death in Cambodia," said the staff walkouts signaled another failure for the beleaguered court.

"With two of the four defendants dead or out of commission, the [tribunal] has failed to do even half of the things the UN and their cheerleaders in the human rights industry promised," he said. "Cambodia's mixed tribunal will serve as a cautionary tale of how not to conduct a war crimes trial. The UN should shut up about further trials already; they need to finish trying the senile defendants and pack it up."

In New York, Eri Kaneko, a spokeswoman for the United Nations, said the UN remains committed to seeing the tribunal funded.

"The secretary-general calls on the international community to come forward with the financing to continue this most important judicial process—not just for the weeks ahead, but to see all the cases through to their conclusion," she said in an e-mail.

UN Secretary-General Ban Ki-moon said in a statement: "I want to use this opportunity to make a special appeal on behalf of the Extraordinary Chambers in the Courts of Cambodia. This court has achieved important successes in prosecuting the brutal crimes committed by the Khmer Rouge regime. Yet today the court is in crisis."

Where voluntary contributions to the court have "run dry," and with Cambodian staff unpaid, he said, "the very survival of the court is now in question."

"Financial failure would be a tragedy for the people of Cambodia, who have waited so long for justice," he said. "It would also be a severe blow to our shared commitment to international justice. I call on the international community to come forward with the financing to continue this most important judicial process—not just for the weeks ahead, but to see all the cases through to their conclusion."

[back to contents]
In the shadow of a confrontation over whether Syria's government had attacked civilians with internationally banned chemical munitions, a rights group reported Wednesday that Syrian armed forces had repeatedly used cluster bombs, another widely prohibited weapon, in the country's civil war.

The group, Human Rights Watch, said in a report on cluster bomb use that it had documented dozens of locations in Syria where cluster bombs had been fired over the past year.

Cluster bombs are munitions that may be fired from artillery or rocket systems or dropped from aircraft. They are designed to explode in the air over their target and disperse hundreds of tiny bomblets over an area the size of a football field. Each bomblet detonates on impact, spraying shrapnel in all directions and killing, maiming and destroying indiscriminately.

Those that fail to explode on impact can still detonate like land mines when disturbed later. A growing number of countries have agreed to a treaty banning the weapons and have destroyed stockpiles; Syria is not among them.

"Syria is persisting in using cluster bombs, insidious weapons that remain on the ground, causing death and destruction for decades," Mary Wareham, the advocacy director for the arms division at Human Rights Watch, said in a statement. "Meanwhile, other countries around the world that have joined the treaty are showing a strong commitment to get rid of cluster bombs once and for all."

Syria's government has denied using cluster munitions in the civil war.

The Human Rights Watch report said that representatives of the 112 nations that so far have signed the 2008 Convention on Cluster Munitions, which prohibits the use, production, transfer and stockpiling of cluster munitions, are scheduled to meet on Sept. 9 in Lusaka, Zambia, to monitor adherence.

According to another rights group, the Cluster Munition Coalition, based in London, there are 85 countries that have not signed the convention, including three permanent members of the Security Council — China, Russia and the United States. Most countries in the Middle East have not signed, including Syria, Israel and Jordan. Two of Syria's neighbors have: Lebanon and Iraq.

The coalition said that children make up one-third of all casualties caused by cluster munitions. It said 60 percent of the total casualties caused by the weapons are civilians going about normal activities.

The Human Rights Watch report said the group had identified 152 locations in Syria where government forces had used at least 204 cluster bombs between July 2012 until June 2013, in 9 of the country's 14 governorates. Several locations, the report said, had been repeatedly attacked with cluster munitions.
US Secretary of State John Kerry has accused Syrian government forces of killing 1,429 people in a chemical weapons attack in Damascus last week.

Mr Kerry said the dead included 426 children, and described the attack as an "inconceivable horror".

President Barack Obama later said the US was considering a "limited narrow act" in response.

Syria has dismissed Mr Kerry's statement as "full of lies", insisting the rebels carried out the attack.

State-run news agency Sana said Mr Kerry, who cited a US intelligence assessment, was using "material based on old stories which were published by terrorists over a week ago".

Mr Kerry's speech was a clear and powerful statement of the rationale for military action against Syria. The focus was placed entirely upon deterring the Syrian authorities from ever using chemical weapons again. This was neither an intervention in the civil war nor an attempt to topple the Assad regime.

Mr Kerry sought to convince a US public that is tired of war that it was Washington's responsibility to act. The message was that there would be no need to wait for the UN inspectors' report; he insisted the report would tell Americans nothing they didn't know already.

The stage is set for action. While no final decision has yet been taken to strike, it may only be a matter of days.

The US says its assessment is backed by accounts from medical personnel, witnesses, journalists, videos and thousands of social media reports.

UN chemical weapons inspectors are investigating the alleged poison-gas attacks and will present preliminary findings to the UN after they leave Damascus on Saturday.

But Mr Kerry said the US already had the facts, and nothing that the UN weapons inspectors found could tell the world anything new.

He highlighted evidence in the assessment that regime forces had spent three days in eastern Damascus preparing for the attack.

"We know rockets came only from regime-controlled areas and landed only in opposition-held areas," he said.

"All of these things we know, the American intelligence community has high confidence."

Mr Kerry called Mr Assad "a thug and a murderer" but said any response by the US would be carefully measured and would not involve a protracted campaign like Iraq or Afghanistan.

However, the UN Security Council is unlikely to approve any military intervention because permanent member Russia is a close ally of the Syrian government.

There is no doubt that a chemical weapons attack took place but not such a compelling case on who did it. The evidence tying this attack directly to the Assad regime was largely circumstantial and asserted - not revealed.

What we would like are the details of the conversations, who carried them out and
Another key element missing is why is this important to US national security and important enough where we would consider a military attack because doubts persist in the US about why we should do this. About 100,000 died before from conventional munitions and we did nothing.

And Kerry did not in the same compelling fashion that he laid the chemical attack at the regime's feet explain why he was certain that a US military attack would bring the Syrian regime to the negotiating table.

Russia, along with China, has vetoed two previous draft resolutions on Syria.

The US was also dealt a blow on Thursday when the UK parliament rejected a motion supporting the principle of military intervention.

The vote rules the UK out of any potential military alliance.

British Prime Minister David Cameron and Mr Obama spoke over the telephone on Friday, agreeing to continue to co-operate on international issues.

The president told Mr Cameron he "fully respected" the approach taken by the UK government, according to the prime minister's office.

US officials said they would continue to push for a coalition, and France said it was ready to take action in Syria alongside the US.

Neither France nor the US need parliamentary approval for action.

French President Francois Hollande, who also spoke to Mr Obama late on Friday, said the two men had agreed that the international community must "send a strong message" denouncing chemical attacks.

Another US ally, Turkey, called for action similar to the Nato bombing raids in the former Yugoslavia in 1999.

Nato carried out 70 days of air strikes to protect civilians from attack in Kosovo, despite not having a UN resolution.

Sarin stockpile The use of chemical weapons is banned under several treaties, and considered illegal under customary international humanitarian law.

The Syrian army is known to have stockpiles of chemical agents including sarin gas.

Earlier accounts of the attack in Damascus quoted officials from medical charity Medicins Sans Frontieres as saying 355 people had been killed.

The UN inspectors have collected various samples that will now be examined in laboratories across the world.

The UN team is not mandated to apportion blame for the attacks.

More than 100,000 people are estimated to have died since the conflict erupted in Syria in March 2011, and the conflict has produced at least 1.7 million refugees.
Footage has emerged of a horrific incident in northern Syria which reportedly shows the aftermath of an incendiary bomb being dropped on a school playground, leaving scores of children with napalm-like burns over their bodies.

Witnesses told a team from the BBC's Panorama programme that a fighter jet had repeatedly flown overhead, as if searching for a target, before dropping the bomb.

The attack killed more than 10 pupils and left many more seriously injured, the BBC said.

Footage showed adults and children, their clothes burned from their bodies, being treated on the floor of a basic hospital. Many had burns to more than 50% of their bodies, it was claimed.

Many were badly burned, shaking uncontrollably and left caked in a white substance, injuries which the BBC said suggested the bomb contained something like napalm or thermite.

The headmaster told reporters: "This was the most horrific thing. We have seen images on TV, we have heard many stories, but we have never seen anything like this before.

"The worst thing in life is watching someone die right in front of you and you can't do anything.

"There were dead people, people burning and people running away, but where to? Where would they go? It is not safe anywhere. That is the fate of the Syrian people."

A British medic, Dr Rola, who was in Syria with the charity Hand In Hand, treated the victims at the hospital.

She said: "It is just absolute chaos and carnage here. We have had a massive influx of what looks like serious burns, seems like it must be some sort of, not really sure, maybe napalm, something similar to that.

"But obviously within the chaos of the situation it is very difficult to know exactly what is going on."

She said later: "We feel like some sort of, not even a second class citizen, like we just don't matter. Like all of these children, and all of these people who are being killed and massacred, we don't matter.

"The whole world has failed our nation and it is innocent civilians who are paying the price."

Mohammed Abdullatif, who witnessed the attack, had a message for the United Nations.

"Dear United Nations, you are calling peace, you are calling for peace. What kind of peace are you calling for? Don't you see this, don't you see this? What do you need to see?

"We are just human beings, we want to live. It is our right to live," he said.

[back to contents]
The Special Tribunal for Lebanon is not a sinking ship and will put on trial the very concept of using assassinations as a political tool in Lebanon, a former top court official said.

In an interview with The Daily Star, Herman von Hebel, the former registrar at the tribunal, discussed his tenure at the STL, cooperation with Lebanon, delays to the start of trial and the tribunal's role in the country nine years after the Hariri assassination.

The STL was established to try those responsible for the Feb. 14, 2005, attack that killed former Prime Minister Rafik Hariri and others. Hezbollah refuses to hand over the four men indicted by the court, which is preparing to try them in absentia in January, nearly nine years after the attack.

Von Hebel stepped down as registrar of the STL in March after being appointed to the same position at the International Criminal Court, which prosecutes war crimes and crimes against humanity.

His resignation prompted critics to call the STL a sinking ship, citing numerous changes in the court's top leadership and delays to the start of trial. The current prosecutor, Norman Farrell, replaced former prosecutor Daniel Bellemare.

Von Hebel was the STL’s third registrar, and Judge David Baragwanath, the tribunal’s president, took its reins after the death of its former head, Antonio Cassese.

The STL is no sinking ship, he said. The STL simply has to move on, and has the potential to move on.

He said that the STL is no different than other tribunals that had faced delays in carrying out their mandate, saying international courts have to balance the need to start trial quickly and deliver justice with protecting the rights of the accused.

Justice is a very delicate and thorough process, but that also means not a very fast process, he said. Speedy justice often is not really justice.

Von Hebel said the STL should do what it can to speed up the trial.

The victims of the assassination have the right to know more, to know the case, to find a final solution, he said. Anything that the STL can do to speed up, they of course should do.

Other international courts have been criticized for lengthy trials. The ICC took 10 years to convict its first war criminal, when the court sentenced Thomas Lubanga, a rebel leader from the Democratic Republic of Congo, to 30 years in prison.
Von Hebel said the STL's role goes beyond finding those responsible for the Hariri assassination and extends to what he said is the very concept of using assassinations as a method of doing politics in Lebanon.

This tribunal and this process are also about putting on trial the mere fact that a huge element of Lebanese politics appears to include political assassinations as a method of politics, and that method is on trial, he said.

That's where I think the court has a much bigger impact than only finding out the truth about the person responsible for the assassination of Hariri, he added. This is about a much wider perspective.

The Hariri attack was a precursor to a wave of political assassinations that plunged the country into turmoil and led to the tribunal's creation.

Von Hebel said the STL has had a deterrent effect on political violence in Lebanon, adding that at least some of the recent violence can probably be attributed to rising regional tensions.

No political assassinations occurred in Lebanon since 2009 when the court opened, until the killing of former intelligence chief Wissam al-Hasan in October last year.

Von Hebel said that local efforts in Lebanon to undermine the credibility of the tribunal have not been successful.

He said such intense criticism of international courts is common, since they intervene in highly sensitive cases when the state is unable or unwilling to investigate serious crimes.

Hezbollah, which is part of the Lebanese government, led a campaign to undermine the tribunal within Lebanon once news was leaked that the STL intended to indict Hezbollah operatives in connection with the Hariri attack.

But von Hebel said that in his experience, Lebanon was eager to cooperate with the STL.

Still, a pall covers those efforts, since Lebanon has failed to arrest the four accused.

But he said it is too simple to assume a lack of cooperation because the men had not yet been detained.

No, there is cooperation, there are a lot of efforts taking place, at least when I was still around at the STL, and I assume that hasn't changed, he said. But it doesn't automatically lead to concrete results.

He pointed to the examples of the Yugoslavia and Rwanda war crimes tribunals, where many years passed before individuals like Slobodan Milosevic and Radovan Karadzic, who were accused by these courts, were arrested, noting that no international tribunal has a police force that can coerce states into cooperating.

Von Hebel said there had been many factors that contributed in the long wait for the Hariri trial, including changes in the top leadership in the prosecution, the transition from the U.N. investigation committee to the tribunal, which was only established in 2009, the delicate political situation in Lebanon and other developments in the country that can impede the progress of the investigation.

He also broached the subject of trials in absentia, allowed under the rules of the Lebanon tribunal but not for the war crimes trials at the ICC. The STL trial will be the first international trial in absentia since the Nuremberg tribunal that tried Nazi
war criminals.

He said the preference is always for the suspect to be present in trial to instruct defense counsel and to be confronted with evidence, but he said that as long as fair trial is ensured, the approach has advantages at the STL.

Justice can happen and the facts can be established, and the victim can at the end of the day find out about the person responsible for the commission of the crime, he said.

When asked to respond to criticism that the STL has a narrow and selective mandate, von Hebel said it was not the job of the court to challenge the political decisions that brought it into existence, but to ensure that trial adheres to the highest standards of international justice.

Obviously the Security Council is a political body, there is no getting around that, he said. The most important thing, however, is that once the political body has spoken, then the institution that has been established should function according to legal standards of a very high nature.

For instance, it is not for the STL to question whether its mandate should be expanded to include other crimes beyond those under its jurisdiction, he said.

STL Meets with Media Council over Leaks
The Daily Star
September 04, 2013

A delegation from the Special Tribunal for Lebanon investigating local news outlets over the publication of a list of alleged court witnesses met with a top media official Tuesday to discuss the case.

The delegation discussed whether the Lebanese National Media Council has authority over media outlets that publish names of alleged witnesses and if it can pursue the source of such a leak, council chief Abdul-Hadi Mahfouz said.

The media regulator asked local outlets to respect the confidentiality of information, Mahfouz said. The STL is tasked with prosecuting those responsible for the Feb. 14, 2005, attack that killed former Prime Minister Rafik Hariri and 21 others.

By order of the STL President, all matters related to the amicus curiae investigation are confidential at this time, court spokesman Marten Youssef said in a statement to The Daily Star, referring to the media investigation.

I am not in a position to confirm or deny any of the reported material you are referring to.

[back to contents]
The International Crimes Tribunal 1 yesterday heard the prosecution which claimed that Human Rights Watch (HRW) had long been questioned across the world for its unethical and motivated role in reporting on human rights issues.

Taking part in the hearing on contempt of tribunal petition, the prosecution alleged that the HRW was staging a drama to stop the war crimes trial. They placed a good number of reports, research publications, opinions of former officials, and open letters of scholars as evidences against the HRW.

The prosecution, however, welcomed all human rights observers to the tribunal but said their reporting should be true and conducted in good faith.

After a near three-hour hearing, the tribunal headed by ATM Fazle Kabir scheduled September 2 for passing order on the contempt of tribunal petition. The prosecution filed the petition on August 20 after the New York-based organisation in a report, on August 16, claimed that the trial of former Jamaat-e-Islami chief Ghulam Azam trial was "deeply flawed" and "did not meet international fair trial standards."

In the petition, the prosecution identified three opposite parties – Human Rights Watch, its Executive Director of Asia Division Brad Adams and Associate of Asia Division Storm Tiv, who is also the writer of the report.

Ghulam Azam on July 15 was handed down a 90-year jail sentence for masterminding war crimes during the Liberation War. Though his offences amounted to the death penalty, the tribunal awarded him a jail sentence taking his age under consideration. Both the prosecution and the defence have filed appeals against the verdict.

The prosecution argues that the tribunal may issue an order of contempt under section 11 (4) of the International Crimes (Tribunals) Act 1973. The provision states: "A Tribunal may punish any person who obstructs or abuses its process or disobeys any of its orders or directions, or does anything which tends to prejudice the case of a party before it, or tends to bring it or any of its members into hatred or contempt, or does anything which constitutes contempt of the Tribunal, with simple imprisonment which may extend to one year, or with a fine up to Tk5,000, or with both."

In his submission, prosecutor Tapas Kanti Baul said the evidences placed at the tribunal showed that the HRW played "unethical and motivated roles in various parts of the world by its unreliable, uncredited, inaccurate and biased reports and findings on human rights matters."

He mentioned Robert L Bernstein, a founder and former chairman of the HRW, who after leaving the organisation publicly blamed the organisation for its unethical and motivated activities. Bernstein had served the organisation for 20 years as its chairman.

The prosecution also pointed out that the HRW have not spoken about rights issues anywhere else. They have never questioned the violations of human rights in Saudi Arabia since they had received donations from the Saudi government. Moreover, the organisation's executive director position has been held by Kenneth Roth since 1993. Roth is one of the policymakers of Sigrid Rausing Trust, a donor of HRW.

Prosecutor Tapas said the HRW had appointed Nazi policy supporters (such as Marc Garlasco) as its investigators to report on war crimes and crimes against humanity. Hearing this, Justice Jahangir Hossain, one of the members of the tribunal, joked:
"They appointed the real experienced people!"

The prosecution also mentioned that the HRW appointed "pro-US terrorists, namely Shawan Jabarin, to its [Mideast] advisory board." Justice Jahangir again intervened to quip: "They also need protection, so they appointed a terrorist. Isn't it?"

After a two-hour-long submission by Tapas, prosecutor Tureen Afroz spoke for 45 more minutes on the legal points. She said, though the organisation claimed that there had been collusion and biasness among the prosecutors and the judges in the Ghulam Azam case, they did not give any credible proof.

The HRW mentioned an unnamed blogger of the Economist as one of its sources for the report; "is it acceptable as a source?" asked the prosecutor referring to the fact that there had been an ongoing war continued between believers and atheists in the country.

Before the hearing on contempt petition, the tribunal 1 allowed the investigation agency to question war crimes suspect Abdus Sobhan, 84, at its Dhanmondi safe house upon a prosecution plea. But it did not mention any specific date for the interrogation.

The prosecution on August 19 submitted a progress report on the investigation and sought more time to submit the formal charges. The tribunal then scheduled September 15 to submit the formal charges or a progress report on investigation against the former Pabna Jamaat-e-Islami ameer.

**Yusuf's Plea Rejected**
Bangladesh News 24
August 26, 2013

**The International Crimes Tribunal has rejected a plea for a review of the order indicting senior Jamaat-e-Islami leader AKM Yusuf.**

A plea for review must be filed within seven days of the order according to the laws of the tribunal, said ICT-2 on Monday. The defence's plea was not filed within the stipulated time frame and therefore it is unacceptable.

The tribunal on Aug 1 indicted the Jamaat leader an ordered commencement of his trial. A hearing of his case is scheduled on Sep 5.

The defendant's lawyers requested a review of the order on Aug 24.

Advocate Saifur Rahman argued for the plea on Monday. Prosecutor Rana Dasgupta argued on behalf of the state.

After the tribunal's order Saifur Rahman told reporters the defence could not submit their plea within the seven days because they did not receive a certified copy of the order in time.

"We requested for a certified copy of the order the day the tribunal framed charges. But the registrar’s office issued it on Aug 13. And we received the copy of the order on Aug 18."

Tribunal on May 12 took into cognisance the prosecution charges against AKM Yusuf. Following which RAB arrested him from his Dhanmondi residence.

The prosecution probe-committee filed 15 charges of murder, genocide, rape, arson and loot against Yousuf on Apr 22.

Probe coordinator Hannan Khan had said they found evidence of involvement of
Razakars, under Yusuf's command, in the killing of almost 700 people.

There were also evidences against Yusuf of looting and setting fire to 300 houses, 400 shops and of forcibly converting 200 Hindus, he added.

Yusuf was a member of the so-called Malek Cabinet, a dummy government formed by Pakistan during the Liberation War. He was also Jamaat's acting chief for some time.

In charge of public works, power, revenue and irrigation in the infamous Malek cabinet, Yusuf joined Jamaat-e-Islami in 1952 and became regional head of its Khulna unit within five years.

AKM Yusuf was sentenced to life imprisonment under the Collaborators Act after Bangladesh's independence but he was released after the Act was annulled.

'Economist Verdict' on Sept 26
Bangladesh News 24
August 27, 2013

The International Crimes Tribunal will deliver its verdict on charges of contempt against London based 'The Economist' on Sept 26

The order was due at ICT-1 on Tuesday but its Chairman ATM Fazle Kabir rescheduled it.

ICT-1 issued an order on Dec 6, asking the British weekly's South Asia Bureau Chief and the Chief Editor to explain why they should not be prosecuted for contempt, as they have breached the privacy of a judge by publishing an alleged conversation between former ICT-1 Chairperson Nizamul Huq and Brussel-based academic Dr Ahmed Ziauddin on Skype.

It asked why measures should not be taken against them for causing obstruction to the trial of crimes committed against humanity in the country during 1971.

Justice Huq resigned from his post as head of ICT-1, set up to try crimes against humanity during 1971, amid the confusion caused by the 'Economist' report on the alleged Skype conversation.

July 18 was fixed for a hearing on the matter.

Mustafizur Rahman, lawyer for 'The Economist' said there is no law in Bangladesh prohibiting journalists from communicating with judges and so the Economist cannot be held responsible for contempt.

He also submitted a written statement on behalf of Economist on Mar 25.

Charge-Framing Order Against Quasem Deferred
Bangladesh News 24
August 29, 2013

The first war crimes tribunal of Bangladesh has deferred the date to pass an order on framing charges against Jamaat-e-Islami leader Mir Quasem Ali, an accused of committing crimes against humanity during the 1971 liberation War.

The International Crimes Tribunal-1 on Thursday set Sept 5 as the new date for the order. The date has been deferred as the defence counsel is currently out of the country.
The hearing on framing charges ended on Aug 21. Sultan Mahmud Simon and Tapos Kanti Bol represented the state during the hearing.

Earlier, the counsels of the defendant on Aug 18 had opposed the framing of charges against their client.

The prosecution on May 16 had filed the charges against the Jamaat leader. The tribunal on May 26 had taken the charges into cognisance.

The 14 charges levelled against Mir Quasem include murder, abduction, torture and massacre.

Mir Quasem was arrested on June 17 last year from the Naya Diganta newspaper office in less than two hours of the tribunal issuing a warrant of arrest. Later he was sent to jail.

He is a director of the Islami Bank, a member of Ibn Sina Trust, and director of the non-government organisation, Rabita al-Alam al-Islami.

The Jamaat leader is also known as one of the top financiers of the party. He is the chairman of the Diganta Media Corporation, known as a pro-Jamaat media house.

Mir Quasem was allegedly the Chittagong unit commander of Al-Badr, a vigilante outfit created by the Jamaat-e-Islami in 1971.

He was the third senior most leader in the outfit's command structure.

Such auxiliary forces like the Al-Badr, Al-Shams and Razakar supported the Pakistan Army to thwart the freedom struggle in 1971.

Crimes against humanity including murder, massacre, rape and loot were rampant in Chittagong and Mir Quasem is said to have played a leading role in them.

There are also allegations that he ordered the massacre and murders at the Razakar camps there.

Mir Quasem, who is from Manikganj's Harirampur, was better known as 'Mintu' to the people of Chittagong during the war. He was part of the Islami Chhatra Sangha during his college days.

He is also one of those who had prepared a list of the intellectuals who were murdered towards the end of the Liberation War. The intellectuals were killed on Dec 14, 1971, only two days before the victory.

After independence, Mir Quasem had fled to Saudi Arabia and returned after Bangabandhu Sheikh Mujibur Rahman and most of the members of his family were brutally killed on Aug 15, 1975.

Draft Law to Drop 1971 Collaborators, Convicts As Voters
Dhaka Tribune
September 2, 2013

The cabinet on Tuesday approved the draft of Voter List (second amendment) Act, 2013 with a provision of disqualifying the collaborators of 1971 Liberation War and the convicted war criminals to enrol their names as voters.

The penalty would be effective for the people who were convicted under the International Crimes Tribunal (amendment) Act, 2009 and the Collaborators Act, 1972.
The approval came at the cabinet's weekly meeting held at the Secretariat with Prime Minister Sheikh Hasina in the chair. Briefing reporters after the meeting, Cabinet Secretary M Musharraf Hossain Bhuiyan said the names of the convicts under the two laws would be excluded from the existing voter list.

He said the cabinet also endorsed the draft of the National Identification Registration (amendment) Bill, 2013 keeping a provision for fine and imprisonment as well as providing national ID cards to all citizens below 18 years of age.

For violating secrecy, the proposed amendment kept the provision of maximum five years' in jail or Tk50,000 as fine or both. The punishment is also the same for any official of the Election Commission.

Musharraf said if anyone applied to the commission for any information, "the EC may provide the data if it feels rational."

The meeting also approved in principle the draft of National Trust for Rights and Protection of Persons with Neuro Developmental Disabilities Bill, 2013 in a bid to ensure the rights and welfare of autistic children.

Under the law, there will be an advisory council headed by the prime minister. Besides, there will be a trustee board comprising experts and stakeholders headed by an eminent person. The board will mainly look after the enforcement of the law and it can also provide registration to the organisations interested to work on autism.

**Jamaat Financier Indicted on 14 Charges**
*Bangladesh News 24*  
September 5, 2013

**The first war crimes tribunal of Bangladesh has indicted Jamaat-e-Islami leader and financier Mir Quasem Ali on 14 charges including murder, abduction and torture.**

Founder of the Ibn Sina Trust and an owner of Diganta Media, Quasem Ali is said to have been third in Al-Badr militia command structure during the 1971 Liberation War.

The International Crimes Tribunal-1, set up to try crimes against humanity during the nine-month war, on Thursday fixed Sept 30 for Quasem Ali's trial, when the prosecution will presumably begin with its opening arguments.

The tribunal has observed that Jamaat, and its student wing, Islami Chhatra Sangha were instrumental in mobilising the pro-Pakistani vigilante militia groups like the Razakar, Al-Badr and Al Shams.

This militia groups are held responsible for perpetrating widespread atrocities amounting to war crimes.

Quasem Ali allegedly was a key leader of Chittagong's Al Badr unit and also featured prominently in the national Al Badr structure.

He is a director of the Islami Bank and director of the non-government organisation, Rabita al-Alam al-Islami.

The Jamaat leader is also said to be one of the top financiers of the party. He is the chairman of the Diganta Media Corporation, regarded as a pro-Jamaat media house.

Mir Quasem was arrested on June 17 last year from the Naya Diganta newspaper
office in less than two hours of the tribunal issuing a warrant of arrest. Later the tribunal sent him to jail.

The prosecution on May 16 had filed the charges against the Jamaat leader and the tribunal on May 26 had taken the charges into cognisance.

The 14 charges levelled against Mir Quasem include murder, abduction, torture and massacre.

Crimes against humanity including murder, massacre, rape and loot were rampant in Chittagong and Mir Quasem allegedly had played a leading role in them.

There are also allegations that he ordered the massacre and murders at the Razakar camps there.

Mir Quasem, who is from Manikganj’s Harirampur, was better known as ‘Mintu’ to the people of Chittagong during the war. He was associated with the Islami Chhatra Sangha during his college days.

Later he became the President of the Islami Chhatra Sangha’s Chittagong unit and General Secretary of its East Pakistan unit.

Al-Badr members and Razakars had set up torture centres in Dalim Hotel at Andarkilla, leather depot at Asadganj and in Salma Monjil at Panchlaish in the port city.

He is also accused of preparing a list of the intellectuals who were murdered towards the end of the Liberation War. The intellectuals were killed on Dec 14, 1971, only two days before the victory.

After independence, Mir Quasem had fled to Saudi Arabia and returned to Bangladesh only after Bangabandhu Sheikh Mujibur Rahman and most of the members of Bangabandhu’s family were brutally killed on Aug 15, 1975.

Later, when Chhatra Sangha rechristened itself as Islami Chhatra Shibir on February 6, 1977, he became its founding President.

[back to contents]

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**War Crimes Investigation in Burma**

**Burma: Buddhist Mobs Burn Down Muslim Homes and Shops**

*The Guardian*

By Associated Press

August 25, 2013

Fresh sectarian violence broke out in north-western Burma late on Saturday when Buddhist mobs burned down dozens of homes and shops following rumours that a young woman had been sexually assaulted by a Muslim man. There were no reports of injuries.

Myanmar’s radical monk Wirathu, whose anti-Muslim rhetoric has placed him at the centre of rising religious violence, said on his Facebook page that hundreds of
people took part in the riot on the outskirts of Kantbalu.

A crowd surrounded the police station demanding that the suspect be handed over, said a police officer from the area, who asked not to be named because he did not have authority to speak to the media.

When police refused, they started setting buildings on fire, he said.

About 35 houses and 12 shops, most belonging to Muslims, were destroyed before calm was restored, he said.

Predominantly Buddhist Burma has been grappling with sectarian violence since the country's military rulers handed over power to a nominally civilian government in 2011.

More than 250 people have been killed, most of them Muslims, and 140,000 others forced to flee their homes.

The unrest began last year in the western state of Rakhine, where Buddhists accuse Rohingya Muslims of illegally entering the country and encroaching on their land. The violence, on a smaller scale but still deadly, spread earlier this year to other parts of the country.

Torture Persists in Kachin State
The Irrawaddy
By Seamus Martov
September 2, 2013

Despite the series of democratic reforms implemented by President Thein Sein's nominally civilian government over the past two years, interviews with recently released prisoners and the families of those who remain in detention in Kachin State indicate that police and military forces continue to torture those jailed on security grounds—this in spite of loud claims from the government that such practices no longer occur.

In the two years since a 17-year ceasefire between the Kachin Independence Organization (KIO) and Burma's central government collapsed in June 2011, dozens of Kachin men have been arrested after being accused of being KIO members or sympathizers. The relatives of those charged tell The Irrawaddy their loved ones were forced to confess to groundless charges after being tortured for days on end.

Those charged with being affiliated with the KIO have little recourse in a court system that after years of military rule is infamous for being biased in favor of the government and rife with corruption. Most if not all of those Kachin charged with violating Article 17/1 of the Unlawful Associations Act and related security laws whose initial trials have been completed appear to have been convicted, according to legal researchers keeping an eye on the court process.

Just keeping track of the outcomes of these trials is a difficult and complicated affair as Burmese courts rarely make their decisions publicly available. Members of the public have also been repeatedly barred from observing KIO-related trials this despite repeated pronouncements from the government that the courts now follow an open process. More than a dozen KIO-related trials remain ongoing but it is extremely unlikely these will result in positive outcomes for the accused, says a lawyer who represents several of them. These trials have continued despite the fact that representatives of the KIO and the president's chief peace negotiator Aung Min reached a seven-point agreement to lessen tensions at the end of May.

At least 70 men from across Kachin State and the northwestern part of neighboring
Shan State remain in jail or are awaiting trial for charges relating to their alleged KIO membership or involvement in the Kachin insurgency, according to Kachin legal researchers who declined to be identified for safety reasons.

Many of these men are in fact poor farmers who have nothing to do with the KIO, their lawyers and relatives claim. Some of those detained under KIO-related charges are not even ethnic Kachin: At least 11 are Shan while several others are of Nepali Gurkha and Sino-Burmese descent. The government has also arrested and charged as KIO members a few men from the Burman majority, Kachin researchers tell The Irrawaddy.

Representing those accused in KIO-related cases is a daunting challenge but this hasn't stopped Mar Khar, a 30-year-old lawyer based in Myitkyina, the Kachin State capital. Despite receiving next to no pay, Mar Khar has dutifully continued to appear in court on behalf of his clients under circumstances that are far from ideal. According to Mar Khar, nearly all of his attempts to introduce evidence or witnesses that support his clients' claims of innocence are routinely rejected by the presiding judges.

Mar Khar is perhaps best known for representing Lahtoi Brang Shawng, a 26-year-old Kachin man who was arrested in June of last year by Military Affairs Security (MAS) agents and charged with being part of a KIO bomb plot. Brang Shawng's arrest occurred while he and his family were living at the Jan Mai Kawng camp for internally displaced persons (IDPs) on the outskirts of Myitkyina.

"He was covered in bruises and had cuts and burn marks all over his body. It was clear he had been tortured," says Mar Khar, recounting the first time he met Brawng Shawng in detention.

In his annual report to the UN Security Council after meeting Brawng Shawng in prison in February, the UN envoy for Human Rights in Burma Tomas Quintana also expressed "serious concerns" that the former mine laborer was "tortured by the military during interrogation to extract false confessions."

In the weeks after his arrest, Brang Shawng's physical appearance was so bad that the initial judge presiding over his case refused to accept his confession when Brawng Shawng was first brought before him for allocution. Alarmed at the clearly visible cuts around Brang Shawng's eye, the judge asked him to remove his shirt, at which point he discovered an audio recorder had been taped to Brang Shawng's torso. "I was really scared. I couldn't tell the judge what had really happened because of the recorder but fortunately he found it," Brang Shawng recalls when describing the bizarre incident which he says was orchestrated by the men from MAS who tortured him.

Just moments after the judge found the device, government agents whisked Brang Shawng away and the judge was quickly removed from the case. His replacement, Myint Htoo, rejected all of Mar Khar's attempts to get Brang Shawng medical attention during his detention and steered the trial towards its inevitable conclusion when in July of this year Brang Shawng was convicted and sentenced to a three-year jail term.

Brang Shawng's treatment caused an outrage among the Kachin community. Just weeks after he was initially arrested, more than 1,000 people gathered in downtown Myitkyina to join his wife in an unprecedented protest.

Many of those marching that day were Brang Shawng's fellow residents of the Jan Mai Kawng IDP camp who just days before had witnessed a disheveled and clearly bruised Brang Shawng being paraded around the camp by government authorities.
for an official reenactment of his supposed crime. "Seeing him in such bad shape upset many people in the camp," says Awng Myat, Brang Shawng's pastor who also serves as a director of the camp.

In an apparent response to the widespread public anger at Brang Shawng's conviction, President Thein Sein officially pardoned him on July 23, less than a week after the judgment was handed down. He was released along with 12 other Kachin serving time for similar charges.

Brang Shawng is now living with his family again at the same IDP camp where he was first arrested.

"I'm very happy to be free now, but I cannot forgive them for what they did to me," Brang Shawng says. Though his bruises and cuts have healed, he has numerous scars all over his body as a result of the brutal methods he says his interrogators used to extract the false confession that he was a serving captain in the KIO's armed wing, the Kachin Independence Army (KIA).

The interrogation sessions were conducted largely in Burmese, a language the 4th Standard-educated Brang Shawng doesn't speak well. "He is a simple man, he had nothing to do with what they accused him of," his 40-year-old wife Ze Nyoi explains.

When asked about the extent of his injuries, Brang Shawng lifts up his shirt to reveal a scar just above his navel. "This is where they cut me with a knife," he recalls. He then lifts his longyi to show dozens of similar scars all over his legs and thighs, the result he says of being repeatedly poked with sharp objects.

Brang Shawng's ordeal, which he says also included rubbing bamboo polls on his shins, has left him physically unable to work or even carry out simple household chores like carrying water from the IDP camp well just meters away from his family's hut. Perhaps even more debilitating are the regular headaches and memory loss he now suffers from, an affliction he says was caused by his interrogators repeatedly delivering blows to his head.

His wife—whose very public campaign to push for Brang Shawng's release was, according to his supporters, a key factor in obtaining his freedom—now worries about how she will support her three children and her husband all on her own.

In a nearby IDP camp located on the grounds of Myitkyina's Shwezet Baptist church lives the wife of another of Mar Khar’s clients who, like Brang Shawng, was arrested in June 2012. Lashi Lu's husband Lahpai Gam is currently on trial for a list of charges including those relating to explosives and being a KIO operative. Lashi Lu says her husband is completely innocent but was forced to confess after being tortured by security officials. According to his wife, Lahpai Gam's interrogators went so far as to force him to perform sexual acts on his fellow detainees.

She continues to attend his trial along with the relatives of three other men from their camp, Brang Yung, Zau Seng Awng and Dayau Tang Gun, who were all arrested at the same time last year and face similar charges. Their families also contend that, like Lahpai Gam, the other detained men were forced to perform sexual acts on each other in order to humiliate them.

"They told him to do to the other man like he would do to his wife. They forced him," says Brang Yung's wife Hkawn Nan. Traveling regularly to the court from the camp to attend her 26-year-old husband's trial has drained much of Hkawn Nan's meager financial resources. Though she remains hopeful that justice will prevail, it appears her husband's only path to freedom is a pardon from the president.

Even being briefly detained by the military for a few days can have serious
consequences that can scar a person forever. Across the river from Myitkyina in Waing Moe Township lives Lahaung Hkaung Haung, a 34-year-old farmer who continues to suffer from serious injuries he says were inflicted in late 2011 by his captors from the Burmese military. He says he was arrested on Nov. 6, 2011 at the local village church where his family and about 20 of his neighbors, including women and children from Muk Chyik village, had taken refuge shortly after fighting broke out in the area that morning.

"The soldiers told us to stop crying or they would shoot us," says Hkaung Haung's wife, recalling how the arrest took place in front of her and their children.

The soldiers who detained Hkaung Haung were furious because the KIO had just launched a lethal strike on their colleagues that day and held the villagers responsible. But Hkaung Haung and the other three men he was arrested with had nothing to do with the KIO or the attack, he says. Despite his pleas of innocence he was held for three days, during which time he was beaten repeatedly. "They struck me on my head many times till I passed out," says Hkaung Haung.

Since then, he says he suffers from severe headaches that intensify whenever the weather changes. A strange bump on the back of his head suggests a serious injury, but Hkaung Huang hasn't seen a neurologist or had a head scan, which are luxuries he can't afford. Due to the persistent headaches and injuries to his back, he has a hard time working and can barely provide for his family. When The Irrawaddy went to visit him at his small farm, his misery was intensified by a severe bout of malaria. He was too weak to even sit up and spent the entire interview lying in the fetal position on the floor of his small bamboo hut.

"Even though I'm not an IDP, my family has still suffered a lot because of this war," he says.

Hkaung Haung is fortunate in one sense, however: Unlike two of the other men who were detained alongside him, he did manage to survive his run-in with the military. Neither 51-year-old Hplalaung Lum Hkaung nor his 20-year-old nephew Chayu Lum Haung have been seen since they were detained.

Presuming both are dead, their families already held funerals for them last year.

[back to contents]

NORTH AND SOUTH AMERICA

United States

Two Algerians Released from Guantanamo Bay
The Washington Post
By Craig Whitlock
The Obama administration announced Thursday that it has released two prisoners from Guantanamo Bay to Algeria, the first transfers from the detention center in almost a year.

The two Algerians are also the first inmates to leave Guantanamo since President Obama pledged in May to redouble his efforts to close the U.S. military prison in Cuba. Obama originally promised to empty Guantanamo upon taking office in 2009, but as of Thursday, 164 prisoners remained.

The Pentagon identified the Algerians as Nabil Said Hadjarab, 34, and Mutia Sadiq Ahmad Sayyab, 37.

Attorneys for the men have said they were among dozens of Guantanamo inmates who had joined a mass hunger strike to protest their prolonged detention. Both men were brought to Guantanamo in early 2002, shortly after the first detention camp at the base was opened. Hadjarab was captured in Afghanistan in late 2001, and Sayyab was arrested in Pakistan.

Military files show that U.S. officials had recommended their release several years ago. But like many others at Guantanamo, their cases became stuck as the White House and Congress feuded over what to do with inmates at the prison.

About half of those remaining have also been cleared for transfer, but finding a place willing or able to accept them has been difficult. U.S. officials fear that some could face reprisals or torture if sent to their home countries, while others might join militant groups if they are not kept under close watch.

The Algerians are the first to leave Guantanamo since September, when the prison’s youngest inmate, Omar Khadr, 26, was sent home to Canada to serve the remainder of an eight-year sentence as part of a plea deal for killing a U.S. medic. He was captured in Afghanistan when he was 15.

The Obama administration notified Congress last month of its intent to release the two Algerians, certifying that they no longer pose a threat to U.S. national security. Neither man was publicly identified at the time.

"President Obama’s directive to close Guantanamo is very clear. This is an important step, and we are moving forward," Clifford Sloan, Obama’s special envoy for closing Guantanamo, said in a statement Thursday.

The Algerian government "raised no objection" to the men’s release, according to the state-run Algeria Press Service. It was unclear whether the Algerian government would keep the men in custody or allow them to go free.

In the past, Algerian inmates at Guantanamo have expressed fears that they could face torture or death if sent home, either at the hands of the Algerian government or jihadist groups.

In 2010, the Obama administration sent Aziz Abdul Naji, 35, to Algeria against his will. He and another Algerian inmate had unsuccessfully petitioned the U.S. Supreme Court to allow them to stay at Guantanamo, arguing that it was too dangerous to go back.

U.S. officials said they have received diplomatic assurances from the Algerian government that the former prisoners will not be mistreated. They said the Algerians have met all previous commitments.
Hadjarab was born in Algeria but grew up in France and hopes to reunite there with his family, said his attorney, Cori Crider, a lawyer with Reprieve, a British legal foundation that has advocated for many Guantanamo inmates.

"After a dozen years of needless detention and abuse in U.S. custody, Nabil is embarking on the greatest adventure of his adult life — freedom," Crider said in a statement. "He arrives in Algeria weakened from his hunger strike, but with high hopes for the future."

**Senate Committee Approves Resolution Authorizing U.S. Strike on Syria**

The Washington Post  
By Anne Gearan, Ed O'Keefe and William Branigin  
September 4, 2013

The Senate Foreign Relations Committee approved a resolution Wednesday granting President Obama limited authority to launch a military strike on Syria in response to its reported use of chemical weapons against civilians.

Acting hours after Obama, during a visit to Sweden, said the credibility of Congress and the international community was also at stake, the committee voted 10 to 7, with one member voting "present," to approve using force against the government of Syrian President Bashar al-Assad. The resolution now goes to the full Senate. The House is separately considering a similar resolution.

The White House welcomed the Senate committee’s action.

The panel acted after top administration officials pressed their case Wednesday for congressional approval of a U.S. military strike, even if lawmakers would support only a more limited authorization than the administration originally wanted.

In a news conference in Stockholm, the first leg of a trip that will take him to Russia for a Group of 20 summit, Obama made the case for a U.S. strike on Syria "limited in time and in scope" to degrade Assad’s military capabilities and deter him from resorting to chemical weapons again in his brutal war, now in its third year, against rebels seeking his ouster.

"I didn’t set a red line," Obama said in response to a question. "The world set a red line" when it declared chemical weapons "abhorrent" and passed a treaty forbidding them. "Congress set a red line when it ratified that treaty."

In a statement after Wednesday's vote, White House press secretary Jay Carney said, "We commend the Senate for moving swiftly and for working across party lines on behalf of our national security. We believe America is stronger when the President and Congress work together. The military action authorized in the resolution would uphold America’s national security interests by degrading Assad’s chemical weapons capability and deterring the future use of these weapons, even as we pursue a broader strategy of strengthening the opposition to hasten a political transition in Syria."

The administration will keep working with Congress "to build on this bipartisan support for a military response that is narrowly tailored" to enforce the ban on chemical weapons attacks but also sufficient to protect U.S. national security interests, Carney said.

After classified, closed-doors hearings Wednesday morning on Capitol Hill, members of the Senate Foreign Relations Committee began debating a new draft of a resolution on the use of force in Syria in response to a reported chemical weapons attack last month that killed more than 1,400 people.
But the hearing to mark up the resolution was delayed for more than two hours amid disagreements among senators over its wording. Among those initially opposed to the Senate committee's draft was Sen. John McCain (R-Ariz.), a leading GOP voice on national security issues, who wanted broader U.S. action against Syria, the Associated Press reported.

The Senate committee’s version, released late Tuesday by a bipartisan group of senators, would permit up to 90 days of military action against the Syrian government and bar the deployment of U.S. combat troops in Syria, while allowing a small rescue mission in the event of an emergency. The White House also would be required within 30 days of enactment of the resolution to send lawmakers a plan for a diplomatic solution to end the violence in Syria.

Opening a hearing Wednesday afternoon to consider amendments to the resolution, Sen. Robert Menendez (D-N.J.), chairman of the Foreign Relations Committee, said it was "tightly tailored" to give the president the necessary authority but "does not authorize" the use of U.S. ground troops in Syria. The committee subsequently rejected, by a 14-4 vote, an amendment from Sen. Rand Paul (R-Ky.) that would have imposed further restrictions by invoking provisions of the 1973 War Powers Resolution.

Paul denied that he plans to filibuster the resolution on the Senate floor, saying a report to that effect was a news media "misrepresentation."

The committee later approved a McCain amendment aimed at strengthening the moderate rebel groups fighting Assad.

The senators voting in favor of the resolution were Menendez, McCain, ranking member Bob Corker (R-Tenn.), Barbara Boxer (D-Calif.), Benjamin L. Cardin (D-Md.), Jeanne Shaheen (D-N.H.), Christopher Coons (D-Del.), Richard J. Durbin (D-Ill.), Timothy M. Kaine (D-Va.) and Jeff Flake (R-Ariz.).

Voting against were Paul and Sens. Tom Udall (D-N.M.), Christopher Murphy (D-Conn.), James Risch (R-Idaho), Marco Rubio (R-Fla.), Ron Johnson (R-Wis.) and John Barrasso (R-Wyo.). Sen. Edward J. Markey (D-Mass.) voted "present."

In the news conference in Sweden, Obama said in making the case for military action: "My credibility is not on the line. The international community’s credibility is on the line. And America and Congress’s credibility is on the line because we give lip service to the notion that these international norms are important."

Appearing before reporters with Swedish Prime Minister Fredrik Reinfeldt, Obama said: "I do think that we have to act. Because if we don’t, we are effectively saying that even though we may condemn it and issue resolutions and so forth and so on, somebody who is not shamed by resolutions can continue to act with impunity. And those international norms begin to erode. And other despots and authoritarian regimes can . . . say, that’s something we can get away with. And that then calls into question other international norms and laws of war, and whether those are going to be enforced."

Asked by a Swedish reporter about "the moral force of nonviolence" and the dilemma of being a Nobel Peace Prize laureate while preparing to attack Syria, Obama reiterated that he was "certainly unworthy" of the prize compared to previous recipients and asked "what are our responsibilities" in confronting a world "full of violence and occasional evil." He argued that when 1,400 innocent civilians, including 400 children, are gassed to death in a war that has already claimed tens of thousands of lives, "the moral thing to do is not to stand by and do nothing."
"I would much rather spend my time talking about how every 3- and 4-year-old gets a good education than I would spending time thinking about how I can prevent 3- and 4-year-olds from being subjected to chemical weapons and nerve gas," Obama continued. But as U.S. president, "I can’t avoid those questions, because as much as we are criticized, when bad stuff happens around the world, the first question is, what is the United States going to do about it?"

In response to a question about dealings with Russian President Vladimir Putin on Syria, Obama said he has tried to convince Putin that a political transition is essential in that country because Assad cannot regain legitimacy after killing so many of his own people. Putin so far "has rejected that logic," Obama said. But he said he "will continue to engage" the Russian leader and remains "hopeful" that he will change his mind.

Putin, however, had harsh words Wednesday for the United States, warning Washington in an Associated Press interview against launching a military strike against Syria, Russia’s only ally in the Middle East.

He also said Congress has no right to authorize the use of force against Syria without a U.N. Security Council resolution and that doing so would be an "act of aggression," Reuters news agency reported.

Putin accused Secretary of State John F. Kerry of "lying" to Congress about the role of al-Qaeda in the Syrian civil war. In a Kremlin meeting of his human rights council, he said of administration officials at a Senate Foreign Relations Committee hearing Tuesday: "They lie beautifully, of course. . . . A congressman asks Mr Kerry: 'Is al-Qaeda there?' He says: 'No, I am telling you responsibly that it is not.'" Putin continued, according to Reuters: "Al-Qaeda units are the main military echelon, and they know this. It was unpleasant and surprising for me. . . . We proceed from the assumption that they are decent people. But he is lying and knows he is lying. It’s sad."

Asked during the hearing whether it was "basically true" that the Syrian opposition has become more infiltrated by al-Qaeda, Kerry said: "No, that is actually basically not true. It's basically incorrect."

Kerry returned to Capitol Hill on Wednesday with Defense Secretary Chuck Hagel and Gen. Martin Dempsey, chairman of the Joint Chiefs of Staff, to brief senators in secret and to testify in a public hearing of the House Foreign Affairs Committee.

Kerry said in the House hearing that more nations are supporting a U.S. strike against Syria than the Pentagon says are needed.

He warned that if Congress fails to pass a resolution authorizing the use of force, the ability of the moderate Syrian opposition to restrain extremists will "dissipate immediately," resulting in "more extremism and greater problems down the road."

Later, Kerry disputed an assertion by Rep. Michael McCaul (R-Tex.) that "radical Islamists" now make up the "majority" of the Syrian rebel forces. Kerry said there are 70,000 to 100,000 "oppositionists" in Syria and that 15 to 25 percent might belong to groups deemed to be "bad guys" among the rebel forces.

"There is a real, moderate opposition that exists," Kerry said.

As he testified, protesters from the antiwar group Code Pink held up red-stained hands in the audience behind Kerry in silent opposition to a U.S. strike.

Rep. Edward R. Royce (R-Calif.), the committee chairman, said proposed use-of-force resolutions in the House are "looking at a short time frame" for U.S. action, as
"It’s very clear on the House side that there is no support for boots on the ground," Royce said.

Asked by Royce for the military view of a more restrictive resolution than originally offered by the administration, Dempsey said that "militarily, the broader the resolution, the more options I can provide." But he added that Obama "has given me quite clear guidance that this will be a limited and focused operation, not an open-ended operation."

Kerry, Hagel and Dempsey told senators Tuesday that a military strike against Syria would "degrade" the country’s ability to carry out attacks — the most specific military objective they have laid out yet — but faced sharp questions about whether such an operation would accomplish much.

Appearing before the Senate Foreign Relations Committee, Kerry and Hagel struggled at times to frame a proposed military strike on Syria as tough enough to be worthwhile but limited enough to guarantee that the United States would not get dragged into another open-ended military commitment in the Middle East. Nonetheless, they assured lawmakers that the administration was not asking for congressional backing to "go to war," as Kerry put it.

"Our military objectives in Syria would be to hold the Assad regime accountable, degrade its ability to carry out these kinds of attacks and deter it from further use of chemical weapons," Hagel said.

Kerry said such a strike would have a "downstream" effect of limiting Assad’s conventional military capacity. Dempsey said his goal would be to leave the regime weaker after any assault.

"On this issue, that is the use of chemical weapons, I find a clear linkage to our national security interest," said Dempsey, who has long been skeptical of the wisdom of military intervention in Syria. "And we will find a way to make our use of force effective."

Over and over, officials from Obama on down have stressed that a strike on Syria would be a narrow and direct response to an alleged Aug. 21 chemical weapons attack on rebel-held or contested areas on the outskirts of Damascus.

The debate has turned from weighing the Syrian government’s culpability in the attack to weighing the merits of inserting the U.S. military into the country’s civil war. The United Nations estimates that more than 100,000 Syrian civilians have died in the violence, and U.S. officials said any military action is not intended to tilt the balance of power in favor of rebels fighting the Assad regime.

Obama has said that he believes he has the authority to act even without lawmakers’ approval but that the United States "will be stronger" if Congress endorses action in Syria. On Tuesday, he asked for a quick vote when all lawmakers return to Washington next week.

The proposed military action "does not involve boots on the ground," Obama said, welcoming key lawmakers to the White House for a meeting. "This is not Iraq, and this is not Afghanistan."

Obama also gained the backing of former secretary of state Hillary Rodham Clinton, who said through a spokesman Tuesday that she "supports the president’s effort to enlist the Congress in pursuing a strong and targeted response to the Assad regime’s horrific use of chemical weapons."
Republican and Democratic leaders expressed strong support for the proposed strike. After meeting with Obama, House Speaker John A. Boehner (R-Ohio) told reporters: "I’m going to support the president’s call for action. I believe that my colleagues should support this call for action."

But even as the House leadership backed the president, support for even a brief military assault remained thin among some rank-and-file members of the chamber.

To address congressional qualms that airstrikes could lead to broader, open-ended military operation, Democratic Reps. Chris Van Hollen (Md.) and Gerald E. Connolly (Va.) said they are drafting a resolution that would sharply limit the authority that lawmakers would give Obama and the scope of such an attack.

U.S. Dismisses U.N. Inspections in Syria of Alleged Chemical Weapons Sites
The Washington Post
By Colum Lynch
September 4, 2013

As Congress debates a resolution authorizing the use of force in Syria, the inspection of alleged chemical weapons sites by United Nations experts has already been relegated by Washington to a historical footnote.

The Obama administration has asserted that the findings — expected in less than two weeks — no longer matter, citing its own evidence that the Syrian government was behind the chemical weapons attack in the Damascus suburbs. Few lawmakers have pressed the administration to wait for the inspectors to release their results.

Weapons experts, however, say such claims miss a fundamentally important truth about the U.N. inspection process: Its on-the-ground analysis can confirm key forensic details about the attack, possibly bolster the case against the Syrian government and help rally international support for action.

"I would strongly encourage the Obama administration and any other countries considering a military strike to wait for the results of the U.N. Secretary General inspection," said Amy Smithson, an expert on chemical and biological warfare at the Monterey Institute of International Studies. "If the U.N. analysis of samples turns out to reveal the use of classic warfare agents believed to be in the Syrian government’s arsenal, like sarin and VX, then the neon light already pointed towards [President Bashar al-Assad] glows even brighter. The point is: Don’t count the inspectors out."

On Thursday, President Obama heads to a Group of 20 summit outside St. Petersburg, where Russian President Vladimir Putin is expected to press Washington to await the findings of the U.N. inspections before taking any action. On the president’s stopover Wednesday in Stockholm, the Swedish prime minister made his own subtle plea for patience, saying, "Let’s put our hope into the United Nations."

The United Nations has said its chief weapons inspector, Ake Sellstrom, and his team are working through the night to assess witness accounts and laboratory tests on samples from the first chemical weapons investigations ever conducted on Syrian soil. U.N. Secretary General Ban Ki-moon — expressing concern that military action would worsen the violence — has also urged the United States to give the inspectors time.

The Obama administration has rejected such calls, noting that U.N. experts have not been asked to determine who carried out the alleged chemical weapons attack. Rather, they are expected to establish whether chemical weapons were used — a question the administration believes the U.S. intelligence community has already answered.
"The U.N. investigation will not affirm who used these chemical weapons," Secretary of State John F. Kerry said recently. "By the definition of their own mandate, the U.N. can't tell us anything that we haven't shared with you this afternoon or that we don't already know."

The United States has long been among the foremost champions of U.N. inspections. Hans Blix, who led U.N. inspections in Iraq during the Saddam Hussein era, said the United States has for decades served as one of the world’s greatest political and financial supporters of the inspections process. But its enthusiasm has waned when inspections have complicated American military objectives.

In Iraq, he recalled, the Bush administration provided U.N. inspectors with information about three dozen suspected weapons sites and underwrote the cost of running U-2 spy flights for the United Nations. But when President George W. Bush decided to go to war, he dumped the U.N. inspectors.

"They were helpful until the tilt came," Blix said. "At the last meeting I chaired before the invasion, the U.S. representative said all this detailed examination . . . is useless. What we needed to see was change of mind, a sort of conversion of Saddam Hussein."

In the case of Syria, Washington has shown a similar ambivalence over inspections.

The United States has used its influence to press the Syrian government to grant inspectors greater powers. Hours after reports emerged indicating a large number of civilians had been asphyxiated by a toxic gas last month, American diplomats in New York introduced a statement demanding the Syrian government admit U.N. inspectors into the area to collect evidence.

Less than a week later, however, the Obama administration called on the U.N. inspection team to leave, saying Syria had shelled the sites in question for days, making conditions for the inspectors too dangerous and contaminating evidence that would have made the process credible.

In interviews, though, former U.S. and U.N. inspectors say that it is highly unlikely that Syria could have completely scrubbed away evidence of a chemical weapons attack. Many said the U.S. argument was unconvincing.

"I don’t think that’s a valid objection to U.N. inspections," said Blix, who added that he is personally inclined to believe the Syrian government did use chemical weapons against its own people. "I agree that sarin is a volatile substance and much of it has blown away. But that’s not the only source of information. There are interviews with eyewitnesses, victims’ body fluids and urine. This is something that stays around for a fair amount of time."

Charles Duelfer, a former U.N. inspector who headed the CIA’s Iraq Survey Group, said he finds it "ironic" that the Obama administration finds itself on similar ground as his predecessor, who also decided to bypass the work of U.N. inspectors in Iraq.

"It’s odd that they are dismissing the United Nations," he said.

"By going through the U.N. you subject yourself to the vagaries of that schedule," Duelfer said. "Certainly it will take time for inspectors to develop results of the analysis of these samples. But the utility of that is it is seen as credible in the international community."

Duelfer acknowledged that it’s possible that U.N. inspections could provide a muddy picture of what happened in Syria. Some of the evidence, according to diplomatic officials, may point to exposure of Syrian security forces — a fact that Russia and
Syria claim proves rebel forces used chemical weapons, but that British, French and American officials contend was the result of misfired rockets hitting their own troops.

Still, Duelfer disputed the U.S. contention that it is too late to collect credible evidence. The science of inspections, he said, has advanced so that traces of chemical weapons agents can be obtained years after an attack.

In 1992, four years after Hussein gassed Kurdish civilians in the town of Halabja, the Boston-based Physicians for Human Rights collected soil samples from the area and sent them to the Chemical and Biological Defence Establishment of the British Defense Ministry. The tests found traces of sarin and mustard gas.

"If you believe there should be a U.N. mechanism for investigating these things, anytime they get in they will get data that's useful," Duelfer said. "You may get lucky."

Putin Warns U.S. Not to Strike Syria, Dismisses Case Against Assad as 'Rumors'
The Washington Post
By Will Englund
September 4, 2013

President Vladimir Putin on Wednesday warned the United States and its allies against launching a unilateral military strike against Damascus, saying the West’s case against Syrian President Bashar al-Assad doesn’t stand up to scrutiny.

In an interview published Wednesday by the Associated Press, Putin said Russia is developing a plan of action in case the United States does attack Syria without United Nations approval, but he declined to go into specifics.

He said Russia — Syria’s most stalwart ally — has frozen the shipment of certain parts for S-300 anti-aircraft missiles that it had agreed to sell to Assad’s regime.

Putin said that if the United States and its allies could provide sufficient evidence that Assad’s forces carried out a chemical weapons attack on Aug. 21 in a Damascus suburb, Russia would consider allowing United Nations action against Syria.

U.S. Secretary of State John F. Kerry said Friday that U.S. intelligence agencies have "high confidence" that Assad’s government was responsible for the attack, based partly on knowledge of regime officials’ conversations about it and the tracking of movements of regime personnel before and after the strike.

But Putin told the Associated Press that he remains skeptical, in part because it seems unlikely that Assad would risk international repercussion by using long-banned chemical weapons to kill hundreds of men, women and children.

"It ought to be convincing," Putin said. "It shouldn’t be based on some rumors and information obtained by the special services through some kind of eavesdropping, some conversations and things like that."

Russia has blocked U.S. and British efforts to have the U.N. Security Council take action against Syria for the attack. British Prime Minister David Cameron backed off efforts to join the United States in possible missile strikes after encountering strong resistance at home. In France, however, Foreign Minister Laurent Fabius said his country is prepared to act in conjunction with the United States.

If the United States decided against military involvement, "this type of action wouldn’t be possible, and so we would have to consider the Syrian question in
"another way," Fabius said in an interview with France Info Radio on Wednesday, hours ahead of a scheduled debate in parliament about France’s potential involvement in Syria.

President Francois Hollande does not need consent from lawmakers to order military action. But opinion polls in recent days suggest that a move against Syria is unpopular among the French public.

Fabius said it was "possible" that Hollande, whose party has a strong majority in parliament, would hold some sort of vote about whether to act. But he said that nothing would be done until "the president has all the elements in his hands."

The global response to Syria is bound to be a major topic as the leaders of the Group of 20 countries gather outside St. Petersburg for a summit Thursday and Friday, even though the meeting is supposed to be about economic growth.

Putin and President Obama are not scheduled to meet one-on-one. Obama considered coming to Moscow ahead of time for a direct meeting with Putin but opted not to, amid rising tensions over Syria, confidential files leaker Edward Snowden and other issues. So Putin invited the Associated Press to sit down with him instead.

The lengthy interview took place at his country residence late Tuesday night, with both the Associated Press and Russian television’s First Channel in attendance. Putin touched on his country’s relations with the United States, his sometimes "vexed" but generally constructive relations with Obama, and a host of other topics — including Syria, Snowden, gay rights and Moscow mayoral candidate Alexei Navalny.

"This man brings problems wherever he appears," Putin said of Navalny, Russia’s most famous anti-corruption campaigner. Navalny, who memorably labeled Putin’s United Russia the "party of crooks and thieves," is currently appealing a six-year sentence for extortion on charges that he claims were trumped up at the Kremlin’s behest.

Despite a new law prohibiting "propaganda" that promotes homosexuality, Putin denied that Russia is anti-gay. He said Obama is welcome to meet with lesbian, gay, bisexual and transgender activists while he is in St. Petersburg for the G-20 meeting and mentioned that he would be willing to meet with such activists himself if they are interested.

One of Russia’s most prominent defenders of gay rights, Nikolai Alekseyev, tweeted on Wednesday that he would be glad to take up Putin’s offer.

On Snowden, the spiller of National Security Agency secrets who fled to Moscow, Putin confirmed that Russian officials had been in touch with him while he was still in Hong Kong.

The interview took place in a cream-colored drawing room in Putin’s residence at Novo-Ogaryovo. He came across as relaxed but engaged, occasionally making a fist to emphasize a point. He didn’t pick any fights with the United States, suggesting instead that Moscow and Washington generally get along fairly well on a range of issues.

"President Obama hasn’t been elected by the American people in order to be pleasant to Russia," he said. "And your humble servant hasn’t been elected by the people of Russia to be pleasant to someone either."

About Obama, he said, "We work, we argue about some issues. We are human. Sometimes one of us gets vexed. But I would like to repeat once again that global
mutual interests form a good basis for finding a joint solution to our problems."

On Syria, Putin emphasized the points that he and other Russian officials have made previously: He said it would have been "ludicrous" for Assad’s forces to use chemical weapons, when the whole world was watching and they were gaining the upper hand against the rebels.

[back to contents]

South & Central America

Columbia

Interview-Colombiaíís Santos Says FARC Faces Jail, Death Without Peace
Reuters
By Helen Murphy and Luis Jaime Acosta
August 9, 2013

Colombia's FARC rebel leaders negotiating peace with the government must return to the jungle and end their days on the battlefield or in prison if talks under way in Cuba collapse, President Juan Manuel Santos said on Thursday.

Santos, who bet his political legacy on bringing peace to the Andean nation, said the FARC, or Revolutionary Armed Forces of Colombia, has little choice but to turn in their weapons and end a conflict that has killed more than 200,000 people since it began five decades ago.

"They would have to return to Colombia and face the destiny of all other FARC leaders who ended up in the grave or in prison," Santos told Reuters in an interview at the presidential palace, when asked what would happen if the talks failed.

More than three dozen FARC commanders are in Havana working through a five-point agenda that would let the two sides declare peace. Santos said FARC leaders who remain on the battlefield such as Rodrigo Londono, known by his war alias Timochenko, would be tracked down and captured or killed.

In his final year of a four-year term, the center-right Santos said he is not concerned the Marxist rebels' inclusion in the political system would shift the tone in Colombia toward the extreme left, calling their Communist rhetoric out of touch with a modern society. On the contrary, he said, their involvement would strengthen the country's democracy.

"The FARC, with its antiquated Communist discourse from the 1960s, will not go anywhere. It's a discourse that is totally obsolete," said the president, the scion of one of the nation's wealthiest and most powerful families.

"If it modernizes, if it realizes that the concept it has of how a state functions in today's world has no validity, that it has been a failure, if it changes the discourse, then it could have an option," said Santos about the FARC's political hopes.
El Salvador's Marxist rebels, the FMLN, or Farabundo Marti National Liberation Front, reached a peace deal in 1992 but took another 17 years to win the presidency.

"The FARC has a 95 percent level of rejection," he said. "How could it win more than 50 percent overnight?"

Santos has faced a barrage of criticism from his predecessor and former ally Alvaro Uribe over the talks and a perception that the rebels have taken the upper hand on the battlefield.

Uribe's barbs have intensified since he became the official opposition last year, hoping to put his own candidate in the presidential palace in 2014.

Santos won election in 2010 by a landslide, pledging to cut unemployment, continue Uribe's hardline security policies, while fostering economic growth and reducing poverty.

The 61-year old Santos - who will not say until November if he will run again - has seen his approval ratings slide below 50 percent, from highs above 74 percent when he took office.

No Amnesty for FARC

Many Colombians are worried that he has offered too much to the rebels and that FARC commanders responsible for atrocities could benefit from soft prison sentences or walk away scot-free.

While Santos argues that it is unrealistic to attempt to investigate and punish all violations and war crimes during the conflict, he remains adamant there would be no impunity.

"They will go to jail or be punished. They will be tried. There will be no reprieve, there will be no amnesty," he said.

The FARC, which has battled a dozen governments, took up arms in 1964 as a Marxist group struggling against inequality, but later turned to kidnapping and drug-trafficking to finance itself. Colombia is a leading producer of cocaine.

Even as the group has been weakened by a decade-long U.S.-backed military offensive, a rash of attacks against oil and mining installations, as well as recent heavy military combat losses, prove it is still a force to be reckoned with.

Despite the recent criticism, Santos, a Harvard-educated economist and journalist, is credited with dealing the FARC some of its heaviest blows and battle defeats.

As defense minister and then as president, he orchestrated attacks that killed or captured the group's top commanders and helped cut their fighting force by half to about 8,000.

Santos said foreign investors had not been fazed by the FARC attacks and were eager to do business with Colombia.

Once an investment pariah as drug-trafficking insurgents kidnapped and killed oil workers and seeded rural areas with bombs, Latin America's fourth biggest oil producer has seen a dramatic turnaround, attracting record foreign investment.

Santos has promised that investment rules will not change as a result of the peace process. But he recognized that if the FARC was successful in being elected to Congress and government posts, it could seek to dismantle existing contracts.
"The rules of foreign investment, the nation's economic model, or respect for private property are not at play ... nothing of that will be negotiated nor will change," he said.

"The only thing that could change that is if the day comes that the FARC win, gain a majority in Congress and decide to change the rules of the game. That's another thing."

**FARC's Most Serious Crimes Must Not Go Unpunished: ICC**
**Colombia Reports**
By Marcus Sales
August 15, 2013

_The International Criminal Court (ICC) have said that the most serious crimes committed by rebel group FARC must not go unpunished, reported newspaper Semana on Thursday._

In an exclusive interview with the newspaper, the Prosecutor of the ICC, Fatou Bensouda, spoke of the legal framework for peace, a pending bill which sets the legal boundaries of what the government is and is not allowed to agree with the rebels.

"The most serious crimes of concern to the international community must not go unpunished."

"Given the goals of the Rome statute (the treaty that established the ICC), the suspension of penalties goes against its object and purpose because in practice it prevents the punishment of those who commit the most serious crimes," stated Bensouda.

Colombia’s prosecutor general said last month that FARC crimes against humanity could go unpunished in a post conflict Colombia.

"I believe that it is possible within the framework of transitional justice and the framework of international law that, even though they will be convicted for crimes against humanity and war crimes, the sentence can be provisionally suspended if this corresponds to the need of overcoming the conflict," Montealegre said at a forum on transitional justice.

According to the prosecutor of the ICC however, such a scenario would be unacceptable.

"The Rome statute in the application of its provisions should be consistent with its primary objective, to end impunity for the most serious crimes," said Bensouda.

"For this purpose the Rome statute reiterates the member states’ obligation to not only pursue and investigate, but to punish the perpetrators of such crimes," emphasized the prosecutor.

President Juan Manuel Santos said last month that the government is "not willing to sacrifice justice for peace" during negotiations with rebel group FARC, insisting the legal framework for peace makes "no room for impunity."

The head of state did however, concede that "we cannot pretend to investigate all acts committed in half a century of violence, but we want to build a realistic strategy, one that meets the rights of the victims in the best way possible."

Membership to the ICC provides an obligation to the member state to all punish members of armed groups who violate international humanitarian law.
NGOs insist that the state has failed to fulfill such an obligation, arguing that the legal framework for peace is a "distortion of transitional justice."

"Instead of achieving maximum justice in adverse conditions, it [Santos' proposed legal framework for peace] allows you to reduce the duty to administer justice under the pretext of peace," stated Gustavo Gallon, director of NGO Colombian Commission of Jurists.

The framework for peace was proposed by the government and approved by Congress last year to set the legal boundaries of what the government can and cannot offer illegal armed groups in return for their demobilization. The legislation regulating transitional justice at the end of armed conflict gained eminence when the government announced to begin peace talks with the countryís largest rebel group, the FARC.

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**Peru**

**Peru Commandos Kill Two Shining Path Leaders**

*Los Angeles Times*

By Adriana Leon and Chris Kraul

August 13, 2013

The killing in southern Peru of the two top military commanders of the Maoist rebel group Shining Path, which has reemerged as a major trafficker of narcotics, may force it to reorganize, analysts and officials say.

Alejandro Borda Casafranca, alias "Alipio," and Martin Quispe Palomino, alias "Gabriel," were killed Sunday night by a covert force formed to track down top rebel leaders.

After a firefight, their bullet-riddled and burned corpses were found in a house in an isolated township of Ayacucho state south of Lima. The body of a third suspected rebel has not been identified.

Terrorism and security analyst Jaime Antezana said Tuesday that the killing of the two rebel leaders was the government's first successful blow in recent years at the top military ranks of the group, known in Spanish as Sendero Luminoso.

Antezana said the two men were deeply involved in the rebelsí management of coca leaf cultivation, as well as the processing and transport of cocaine.

"Itís important because itís the first blow to the leadership," Antezana said of the rebels' military branch. "Alipio was the principal commander of this organization." The military branch was more dedicated to drug trafficking than ideology, and apt to hire out independently to drug trafficking gangs, he said.

Peru has retaken the lead from Colombia in coca cultivation and cocaine production, according to last yearís survey by the United Nations Office on Drugs and Crime. Shining Path is thought to play a key role in the protection of coca crops as well as in the refining and transport of processed cocaine in the valleys of the Apurimac, Ene and Monzon rivers in southeastern Peru.

Peruvian President Ollanta Humala said Monday that the killings were a major military accomplishment and would cause a "recomposition of this terrorist group" thought to number no more than 500 fighters.
The special force that killed the two leaders was also instrumental in the capture of one of the group's political leaders, known by the alias "Artemio," last year.

Sendero Luminoso launched its violent operations in 1980 as a Maoist insurgent force. Appealing to neglected poor and indigenous communities, it took control of vast swaths of Peruís rural regions and some urban areas by the early 1990s, raising fears in the U.S. government that it might someday take power.

But its charismatic founder, former philosophy professor Abimael Guzman, was captured in 1992 and subsequently sentenced to life in prison. The rebel force quickly dissipated.

The reappearance of the group and of cocaine trafficking in Peru has been of particular worry to U.S. military and counter-narcotics officials, as is the scarcity of U.S. aid available to assist the Peruvians in fighting traffickers.

While Colombia has received hundreds of millions of dollars in military aid over the last decade to fight leftist rebels and drug traffickers, Peru this year will receive about $6 million in direct aid from the Defense Department, officials say.

Much of the cocaine produced in Peru is shipped to expanding markets in Brazil and Argentina. Some of that is then sent to Europe and the Middle East, officials have said. Most of the U.S. demand for cocaine still is supplied by Colombia.

Fujimori Changes Strategy to Exit Peruvian Prison
Andean Air Mail & Peruvian Times
August 15, 2013

**Jailed ex-President Alberto Fujimori is changing his legal strategy, in the wake of his failure to obtain a presidential pardon, and is now pushing for the government to grant him house arrest, according to daily El Comercio.**

Fujimori, 75, applied for a humanitarian pardon last year based on grounds that his health has deteriorated significantly. President Ollanta Humala rejected the pardon request after a committee of medical professionals said the former president does not have a terminal illness and that his depression is not life-threatening.

Fujimori is serving a 25 year prison sentence for human rights crimes and corruption committed during his 10 year rule in the 1990s. He is suffering from depression and he appears to have aged significantly since he was jailed in 2009.

Fujimoriís attorney for this specific strategy, William Castro, said that "we want him to complete his sentence," while serving the remaining years at his house.

"House arrest exists within the penal systemÖ within the penal process," Castro said. "There isnít a norm that prohibits that one who is in the penal system canít pass to the other system."

Meanwhile, attorney Cesar Nakasaki, who has been Fujimoriís defense lawyer since his first trial in 2007, remains in charge of court cases. Pending a medical report, Nakasaki is also using the argument of "delicate" health to file a plea to the judiciary to have Fujimori excluded from the so-called "yellow press trial," on the grounds that Fujimoriís health could deteriorate if he had to stand trial.

The date for the trial has yet to be set, and deals with the use authorized by Fujimori of some $44 million of the military budget that was rechanneled to bribe several newspapers and television stations, and fund new tabloids and TV shows, in exchange for following editorial instructions dictated by the government. The
prosecution is requesting an eight-year prison sentence and civil reparation of $77 million.

According to Ronald Gamarra, former prosecutor for corruption cases, the health argument, if accepted by the judge, would mean that Fujimori would not go on trial and would not be required to pay the civil reparation.

Over a decade since he fled the country as his government toppled in corruption, Fujimori remains a polarizing figure in Peruvian society. There is still a large group that backs him, arguing that he set the foundation for Peru’s economic growth during the past 10 years and that he was responsible for the defeat of the Shining Path rebels. Others who are in favor of his trials and convictions do recognize the success of his first measures but point to the criminal methods he used to achieve it, including bribery, blackmail and murder.

Chile

Chile Ex-Army Chief Admits Handing Child to Nuns
Associated Press
August 20, 2013

Chile's former army chief acknowledged on Tuesday that he handed over to nuns the child of two left-wing activists killed after the 1973 military coup.

Juan Emilio Cheyre, who now heads Chile's electoral service, told the newspaper El Mercurio that he gave 2-year-old Ernesto Lejderman to a convent. In his first time speaking publicly about the case, he said that he was just following orders and that his conscience is clean.

"In this and every act of my life, I never hid my past or stopped assuming my responsibilities," Cheyre said. "I've faced even responsibilities that I felt others didn't in the tragic history of Chile."

Lejderman, who was raised by his grandparents in Argentina, has said Cheyre shouldn't face charges. But human rights group are calling for Cheyre to quit his electoral post.

Lejderman's parents, Argentine citizen Bernardo Lejderman and Mexican citizen Rosario Avalos, were killed while trying to escape with their son after Gen. Augusto Pinochet's coup.

The Pinochet dictatorship's official version of what happened was that the couple committed suicide with dynamite. But 25 years after their deaths, a court said they were murdered by a military patrol on the outskirts of the northern city of La Serena.

Cheyre, who was then a 25-year-old lieutenant, said his superiors ordered him to take the child to a convent while they contacted his grandparents through the Argentine and Mexican embassies.

He said he has since met with the couple's son. He said that the case is closed and that "those who were responsible were already convicted" by the Supreme Court.

Chile's government estimates 3,095 people were killed during Pinochet's 1973-90 dictatorship.
A federal judge on Friday refused to toss out terrorism charges facing an Egyptian Islamic preacher extradited from Great Britain and said she'll decide during a trial next year whether government references to al-Qaida being led by Osama bin Laden more than a decade ago and other statements are inflammatory.

U.S. District Judge Katherine Forrest left intact the 11-count indictment brought against Mustafa Kamel Mustafa as she ruled on pretrial motions.

Mustafa faces trial in March on charges filed in Manhattan after his arrest in England in 2004. He was extradited to the United States last year. His lawyers had asked the judge to dismiss charges including conspiracy to take hostages, hostage-taking and conspiracy to provide material support to terrorists.

Prosecutors say Mustafa conspired with Seattle men to set up a terrorist training camp in Oregon and helped to abduct two American tourists and 14 others in Yemen in 1998.

Defense attorney Joshua Dratel said he was disappointed that motions were denied but had not fully read the opinion.

The judge, in declining to dismiss the indictment, said the deciding issue was whether the crimes were calculated to harm American citizens and interests, not whether the defendant was in the U.S., participated in communications into or out of the U.S. or transacted business in the U.S.

She said the facts in the indictment were "plainly sufficient" to support the charges even if Mustafa had no expectation that he would be prosecuted in the United States.

She said Mustafa was on notice that his actions could harm U.S. people and interests because al-Qaida had made statements that it wanted to harm the U.S.

Defense arguments that an allegation in the indictment that Mustafa was on the telephone and advising hostage takers during their criminal acts was insufficient to identify his participation in a crime "is simply wrong," she wrote.
"Even so," she added, "defendant is alleged to have done more: to have equipped the hostage takers with a means of communication — which, for hostage taking to achieve its purposes can be a critical tool — and have purchased additional minutes so that the hostage takers could succeed in their criminal activities."

The judge also said the allegations about setting up a holy war, or jihad, training camp in Bly, Ore., were sufficient. The indictment said Mustafa and a co-defendant in October 1999 discussed setting up the training camp and a co-conspirator told Mustafa he was stockpiling weapons and ammunition in the United States.

The judge said the amount of evidence gathered before the trial was voluminous.

"At the end of the day, there are only a few events really at issue," she said.

She said complaints that the indictment contained inflammatory language, including that al-Qaida was led by bin Laden, could be handled at trial on a case-by-case basis, though she noted that the language had been permitted at past terrorism trials. The congressional appeals on the prosecution of Palestinian prisoners by Rep. Salmon and others, however, face some significant obstacles. In a reply letter sent to Sen. Inhofe dated April 5, 2012, which JNS.org obtained from EMET, U.S. Assistant Attorney General Ronald Weich described "significant impediments" for prosecuting terrorist attacks that occur overseas. In particular, Weich noted that terrorist attacks in Israel, the West Bank, and Gaza "present particular challenges."

According to Weich, these challenges are related to Israeli’s crime scene evidence collection.

"For Israeli officials, the focus following an attack is often, understandably, on clearing the crime scene to minimize disruption, taking steps to prevent a further attack, and neutralizing operatives responsible, rather than on collecting evidence consistent with standards required for prosecution in the United States," Weich wrote in the letter to Inhofe.

Complicating matters further is the U.S. involvement in the effort to restart Israeli-Palestinian conflict negotiations, led by Secretary of State John Kerry. But Sarah Stern, founder and president of EMET, told JNS.org that she believes "if there is a will, there is a way" when it comes to U.S. prosecution of released Palestinian terrorists. Stern added, however, that she does not believe the DOJ has the will to prosecute these cases and is instead pointing to legal and bureaucratic obstacles that can easily be overcome.

"I know there are serious obstacles, but if we really wanted to get these terrorists, we could," Stern said.

Stern pointed to the case of Ahlam Tamimi, a Palestinian terrorist who was sentenced to multiple life sentences for her participation in the 2001 Sbarro restaurant suicide bombing in Jerusalem that killed 15 civilians, including two Americans. She was later set free as a result of the Shalit deal. Tamimi now lives in Jordan and has become something of a celebrity. She hosts a television show on a Hamas-run satellite TV station about Palestinian prisoners in Israeli jails, according to the Jerusalem Post.

"We have an extradition treaty with Jordan. We could bring her to justice," Stern told JNS.org.

This sentiment has been echoed by Sherri Mandell, mother of terror victim Koby Mandell, 13, who was brutally stoned to death along with his friend Yosef Ishran, 14, while on a hike outside of their home in Tekoa in the Gush Etzion area of Judea and Samaria in 2001, at the beginning of the Second Intifada. Koby was an Israeli-
American and his murder inspired the creation of the DOJís Office of Justice for Victims of Overseas Terrorism (OJVOT).

The Koby Mandell Act, a bipartisan bill in the U.S. Congress spearheaded by the Zionist Organization of America, became law after it was incorporated into a larger spending bill in 2005. It required the U.S. Attorney General to establish the OJVOT to monitor acts of terrorism against Americans outside the U.S., and to attempt to bring to justice those terrorists who have harmed Americans.

"While in 2005 the Justice Department established an office in my son Koby Mandellís name in order to pursue the killers of American citizens in Israel, the office has never done anything to prosecute Palestinian terrorists," Mandell wrote in an op-ed in the Jerusalem Post in April 2012.

"We feel that we are again victims: the office is an affront to my sonís name," Mandell wrote.

Stern said that she believes the OJVOT is not living up to its mission. "They could be a real advocate for the victims of terrorist attacks," Stern said.

Since 2005, the OJVOT has only prosecuted one terrorist who murdered an American citizen ó the killer of a Christian missionary in Indonesia ó according to EMET.

Again referring to the Tamimi case, Stern believes that it presents an opportunity for the U.S. to do more for the victims of terrorism as well as to deter future violence against Americans.

"That case could set an excellent example to the world and show terrorists that they will be held accountable for killing American citizens," Stern concluded.

Arnold Roth, whose 15-year-old daughter Malki was killed in the attack orchestrated by Tamimi, has been highly critical of both the Shalit deal through which Tamimi was freed and the latest deal to free 104 Palestinian terrorists for renewed Israeli-Palestinian conflict negotiations.

"From the standpoint of simple negotiating theory, what Israel has done, even if Israel never actually delivers, is a losing move," Roth told JNS.org in July. "Even if there were a case for saying Israel ought to concede to a list of pre-negotiating demands from the other side, freeing terrorists ought never to have been one of them."

"I am emphatically not political, and it does not come naturally to me to be speaking against something the government in its wisdom decided to do," Roth added. "But the idea to hand over murderers in order to prime some sort of negotiating pump simply enrages me."

Among the 26 terrorists in the first phase of the prisoner release for Israeli-Palestinian conflict talks, 17 were convicted of murder, and the remaining prisoners were jailed on charges of manslaughter, attempted murder, kidnapping and conspiring to commit murder. Included in the deal are the terrorists who killed Menachem Dadon and Salomon Abukasis in Gaza in 1983, Israel Tenenbaum at the Sironit hotel in Netanya in 1993, Israel Defense Forces reservist Binyamin Meisner in Nablus in 1989, Isaac Rotenberg at a construction site in Petah Tikva in 1994, one of the men involved in the murder of Simcha Levy in 1993, and one of the terrorists involved in the murder of Haim Mizrahi near Beit El in 1993.
A Greek militant anarchist group has claimed responsibility for a letter bomb sent to an anti-terrorism prosecutor, which exploded on Sunday without causing injury or damage.

The Conspiracy Nuclei of Fire, or SPF, is also urging other anarchists to attack members of the judiciary. It says it targeted Dimitris Mokkas in revenge for recent arrests over another letter bomb sent to a former police anti-terrorism chief.

In a posting on a leftist website Tuesday, the SPF said many judges lack police guards and are "easy to find." It called for attacks ranging from bodily assault to bombings and "executions."

The SPF is a self-described "anti-social" nihilist group behind a string of bombings since 2008, which claimed no victims. More than 20 suspected SPF members have been charged with terrorism.

Judge in Terrorist Case Undoes Key Surveillance Ruling Favoring Feds; Reopens Issue to Debate
Associated Press

A federal judge in a Chicago terrorism case has undone a key ruling saying the government needn't divulge whether its investigation relied on expanded phone and Internet surveillance programs.

Adel Daoud (dah-OOHD') denies trying to ignite what he thought was a bomb in Chicago. But if agents used the programs, he says they violated protections against unreasonable searches.

Ex-government contractor Edward Snowden revealed the programs' existence.

Prosecutors argued they won't use evidence derived directly from expanded surveillance at the 19-year-old's trial, so aren't required to disclose if they relied on the programs.

Judge Sharon Johnson Coleman sided with prosecutors last week. But this weekend, she took the rare step of vacating her ruling when the defense complained it was premature.

By doing so, she reopens the matter to further debate.

[back to contents]
Secretary-General Ban Ki-moon has called today on Central African leaders to collectively focus on conflict prevention in the subregion and to fight the threats of piracy and armed robbery at sea, as well as other security challenges.

"This meeting offers a unique opportunity to find concerted and innovative solutions to problems that threaten peace and security in the Central African sub-region," Mr. Ban said in a message to the 36th meeting of the UN Standing Advisory Committee on Security Questions in Central Africa (UNSAC), held in Kigali, Rwanda.

The Committee’s mandate is to encourage arms limitation, disarmament, non-proliferation and development in the sub-region. It is grouping of eleven Member States comprised of Angola, Burundi, Cameroon, Central African Republic (CAR), Chad, Congo, Democratic Republic of Congo (DRC), Equatorial Guinea, Gabon, Rwanda, and Sao Tome and Principe.

In the message, delivered by Abou Moussa, his Special Representative and head of the UN Office for Central Africa, Mr. Ban commended the Committee for its "pioneering efforts to address" piracy and armed robbery through the active collaboration with Member States and the Secretariat of the Economic Community of West African States and the Gulf of Guinea Commission (GGC).

Most recently, Western African leaders met in June at the Summit of the Gulf of Guinea Heads of State and Government on maritime safety and security in Cameroon to establish an effective framework to combat piracy and armed robbery at sea.

At the Summit, participants adopted the 'Code of Conduct concerning the Prevention and Repression of Piracy, Armed Robbery against Ships, and Illegal Maritime Activities in West and Central Africa', which defines the regional maritime security strategy and paves the way for a legally binding instrument. Mr. Ban and the UN Security Council welcomed the move.

Mr. Ban also said that he was pleased that the Committee’s agenda included the issue of elephant poaching.

"We must fight this illegal and intolerable activity vigorously, particularly given its alleged role in the illicit financing of some rebel groups," he noted.

In his statement, Mr. Ban noted the establishment of a network to contribute to the fight against terrorism held in the DRC in December 2012. He said the "time is ripe" for a mid-year review of its activities.

[back to contents]

Gender-Based Violence

Two More Suspects Arrested in Indian Rape Case
Los Angeles Times
By Mark Magnier
August 24, 2013
Police arrested two more suspects Saturday in the rape of a 22-year-old photojournalist in Mumbai, according to police and local media, in a case that has unnerved India and drawn parallels with an attack in December that led to tougher laws and nationwide protests.

According to media reports, a suspect named Vijay Jadhav, 19, was arrested early Saturday morning after being found hiding at a friend’s video shop in south Mumbai. Local news reports, citing police sources, reported that another suspect, Siraj Rehman, 25, was arrested late Saturday, without revealing details.

The news followed the reported arrest Friday of suspect Chand Shaikh, who also used the alias Mohammed Abdul. Police said he was also 19, but his family has claimed he’s a minor and did not commit the crime.

"The probe is heading in the right direction, and we hope to arrest all other absconding accused soon," city police commissioner Satyapal Singh told reporters.

The victim, an intern at a lifestyle magazine, was photographing an abandoned mill with a male companion for an assignment Thursday about 6:30 p.m. when she was allegedly accosted by two men who called three friends, tied up and beat her male companion and raped her repeatedly. Mumbai is usually considered one of India’s safest cities for women.

The hospital where she was being treated said Saturday in a statement that her condition was improving.

Local media, citing police and other official sources, have reported more details of the case. The Mumbai Mid Day newspaper said Saturday that it obtained a portion of the victim’s statement to police.

"They took my photographs on their cellphones and threatened that if I spoke about the incident to anyone, they would defame me by revealing my identity," the newspaper said she told authorities.

And the Times of India quoted what it said was part of the victim’s statement from her hospital bed.

"I want no other woman in this city and country to go through such brutal physical humiliation," the victim reportedly said. "The perpetrators should be punished severely, as they have ruined my life."

The accounts could not be independently verified. Revealing the identity of rape victims is against the law in India.

Media reports also said her alleged attackers threatened her with a beer bottle as they raped her. The attack took place in a former industrial area that is now one of Mumbai’s fastest-growing neighborhoods.

Hundreds of people have staged protests across India’s financial capital, and many people nationwide have taken to social media to voice their anger that another such attack had been allowed to happen.

The latest attack follows the brutal gang rape of a physiotherapy student in a bus in New Delhi in December that sparked tough laws, including the death penalty for gang rape, new fast-track courts for rape cases and spirited demonstrations. The victim of that attack died of her injuries.

Delhi Gang Rape: Verdict on 10 September
BBC
A court in India will deliver a verdict next week in the case of four men charged with fatally gang raping a woman on a Delhi bus last December.

Dismissing defence pleas for more time, the judge said: "You've delayed this trial far enough." Verdicts are due on 10 September - the case shocked India.

The four men, who deny charges including rape and murder, could face the death penalty if found guilty.

On Saturday, a teenager was found guilty of taking part in the rape.

He was sentenced to three years in a reform facility, the maximum term possible because the crime was committed when he was 17.

He also denied all the charges.

The gang rape of the 23-year-old woman last December caused uproar across India and triggered a national debate about the treatment of women.

In March, India passed a new bill containing harsher punishments, including the death penalty, for rapists.

The victim, a physiotherapy student who also cannot be named for legal reasons, was with a male friend when she was attacked on a bus and thrown from the vehicle.

Police said the assailants beat both of them and then raped the woman. She died in a Singapore hospital on 29 December from massive internal injuries.

A fifth adult defendant was found dead in his cell in March. Prison officials said they believed he hanged himself but his family allege he was murdered.

‘Hundreds of FGM Asylum Applications’ Rejected in the UK
International Federation of Gynecology and Obstetrics
By David Smith
September 4, 2013

Despite recognising the threat of female genital mutilation (FGM) abroad as justification for claiming asylum, the UK Border Agency reportedly rejects the applications of "hundreds of women" trying to escape the practice in their native countries.

In Newsnight, the BBC interviewed two Gambian women whose claims had been turned down. Instead of being granted asylum, they were advised by the agency to relocate to elsewhere in the Gambia.

However, relatives of one woman, identified as Fatima - who fled the country on fear of having her daughter undergo FGM - were reportedly "unequivocal" in regards to the likelihood of the practice being carried out at home.

"If Fatima comes back, her daughter must be cut," the woman's mother said.

When approached, the Home Office insisted the UK has a "proud record" in granting asylum to "those in genuine need".

"[FGM] is child abuse and has no place in our society. We are working closely with frontline agencies to help prevent women and girls from becoming victims," it
The UN's top rights official began a fact-finding mission to Sri Lanka on Sunday after the government dropped public hostility towards her and promised access to former war zones.

Navi Pillay, who has previously been accused by Colombo of overstepping her mandate, arrived in the capital for a week-long mission that will include talks with President Mahinda Rajapakse and visits to the former war zones in the north and east.

The government's U-turn came as Canada leads calls for a boycott of a Commonwealth summit scheduled to take place in the Sri Lankan capital later this year.

Sri Lanka has resisted pressure from the UN and Western nations for a credible investigation into allegations that up to 40,000 civilians were killed in the final months of its separatist war, which ended in 2009.

A no-holds-barred military offensive crushed Tamil Tiger rebels who at the height of their power controlled a third of Sri Lanka's territory. Rajapakse has since been dogged by claims of indiscriminate killing of ethnic Tamils.

During her visit, Pillay is scheduled to hold talks with Sri Lankan rights defenders to discuss the "culture of impunity" that existed over the conflict, local rights activist Nimalka Fernando said.

"We are in the process of finalising our memo to her. We want to talk about the culture of impunity during and after the war," Fernando told AFP.

"We are also specifically taking up the issue of media freedom in Sri Lanka."
Fernando said an armed break-in at the Colombo home of a senior journalist at the Sunday Leader newspaper on Saturday could be linked to her work, although police insisted it was only an attempted robbery.

The attack was the latest in a string of violent incidents involving the staff of the privately-run newspaper, whose founding editor Lasantha Wickrematunge -- a fierce government critic -- was shot dead while he drove to work in January 2009.

"The murder of the Sunday Leader editor has still not been solved and this is also something that we will take up," Fernando said.

Tamil groups are banking on Pillay's first visit to Sri Lanka to revive calls for a war crimes probe.

"We will take up with her the question of accountability, the issue of thousands of missing people, the militarisation of Tamil areas and the lack of political freedoms," Tamil National Alliance lawmaker Suresh Premachandran told AFP.

Pillay's visit follows two resolutions by the UN Human Rights Council (UNHRC) in as many years demanding Colombo hold an independent investigation into "credible allegations" that troops shelled hospitals and refugee camps, and executed surrendering rebels.

The government insists that its troops did not kill civilians and has slammed the UNHRC for its "ill-timed and unwarranted" resolutions.

A pro-government group said it will hold a demonstration outside the UN offices in Colombo on Monday to protest Pillay's visit. The same group has held similar protests in the past and called Pillay a US stooge.

The government's change of heart in welcoming the rights chief could signal a desire to improve its image ahead of a crucial UNHRC session in September and the Commonwealth Heads of Government Meeting in November.

"She has not accepted what we have done (to improve the rights situation)," Sri Lanka's human rights envoy to the UN, Mahinda Samarasinghe, told reporters in Colombo last week.

"So we are showing her what we have done and we are also allowing her to visit anywhere and meet anyone."

Until recently, the government declared much of the former northern war zone off limits to foreign journalists, aid workers and even UN staff.

In the past, Samarasinghe, who is also the plantations minister, has criticised Pillay for lacking "objectivity and impartiality".

Britain and Australia have asked Sri Lanka to improve its rights record ahead of the Commonwealth meeting, while Canada's Prime Minister Steven Harper has said he will boycott the summit to protest continuing abuses.

UN Tribunal Removes Danish Judge from Long-running War Crimes Trial of Serb Nationalist Seselj
The Washington Post
August 29, 2013

The Yugoslav war crimes tribunal has removed a Danish judge from the long-running war crimes trial of Serbian nationalist Vojislav Seselj, saying in a decision published Thursday that a letter the judge wrote criticizing
the court makes it appear he is biased.

It was not immediately clear what effect the ruling will have on Seselj’s trial, or other trials the judge, Frederik Harhoff, took part in. The three-judge panel had been scheduled to deliver a verdict in Seselj’s case Oct. 30.

Tribunal spokeswoman Magda Spalinska said the court’s vice president will now have to make a decision on how the Seselj case should continue.

Seselj’s trial on charges of using hate-laced speeches to encourage Serb rebels to commit atrocities in Bosnia and Croatia began in 2007. He denies the charges.

Seselj, leader of the Serbian Radical Party, surrendered to the Hague-based United Nations court more than a decade ago, saying he would make a mockery of the case against him. In closing statements last year, prosecutors demanded a conviction and 28-year sentence.

However, after Harhoff’s letter leaked into the public earlier this year, Seselj demanded he be removed from the trial, saying Harhoff appeared biased toward convicting Serbian leaders.

In the letter, Harhoff wrote that it was "more or less set practice" at the tribunal to convict military commanders for crimes committed by their subordinates and lamented recent judgments that eroded the practice by acquitting senior commanders.

He also wrote that he had always "presumed that it was right to convict leaders for the crimes committed with their knowledge."

By a 2-1 majority, a panel of judges established to rule on Seselj’s request said that the letter’s contents mean "an unacceptable appearance of bias exists."

Harhoff did not immediately respond to the decision.

However, his position at the court now appears untenable. Even a Chinese judge who disagreed with the decision to remove Harhoff was scathing about the letter.

In a dissenting opinion, Judge Liu Daqun described the letter as, "an inarticulate critique of the recent jurisprudence of the Tribunal based on unsubstantiated speculations and insinuations of improper conduct by other colleagues in a fashion that is unbefitting of a Judge."

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**Alex Salmond Calls for President Assad to Face War Crimes Trial if UN Inspectors Find that His Regime Gassed Civilians**

*Daily Record*  
By David Clegg  
August 29, 2013

**Alex Salmond yesterday demanded Syrian president Bashar al-Assad face trial for war crimes – if inspectors find he gassed civilians.**

The First Minister spoke out as the UK Government bowed to pressure from United Nations secretary general Ban Ki-moon not to attack until the chemical weapons experts complete their mission.

US president Barack Obama said he had concluded that the Syrian government did use chemical weapons in attacks near Damascus.

Obama and Prime Minister David Cameron were convinced Assad was guilty of gassing his own people after listening to a taped call between panicked defence
chiefs, US newspapers claimed yesterday.

The call, which was reportedly intercepted by Israeli military intelligence, came in the hours after last Wednesday’s chemical attack near Damascus.

An official at the Syrian ministry of defence rang the commander of his army’s chemical weapons unit demanding answers about what happened.

Last night, Obama said a "shot across the bows" could have a positive impact on Syria’s war but added he had not yet decided whether to intervene militarily.

A US state department spokesman said they could take action without the backing of the UN or allies.

Cameron had earlier backtracked on plans for a decisive vote today on an attack at a recall of Parliament – and postponed it until after an inspection.

Labour had warned they would vote against any motion to attack Syria.

Leader Ed Miliband said: "Parliament must agree criteria for action, not write a blank cheque."

Salmond called for the inspectors to be given time.

He said: "The Scottish Government condemns unreservedly the actions of the Assad regime over recent months and years. We condemn and deplore any use of chemical weapons as a crime against humanity.

"If the findings of UN inspectors point to this appalling attack having been perpetrated by the regime, Assad and those responsible should face the International Criminal Court.

"Any resort to military action should always be approached carefully, on an evidential base and within a clear legal framework – and only after full consideration of the aims, objectives and consequences.

"The Scottish Government believe UN inspectors should be given the time to complete their investigations."

Westminster has been recalled to debate Syria today. Earlier, Cameron had banged the drum for war.

Britain had been planning a "short, sharp" campaign with the US as early as this weekend involving Trafalgar submarines and missiles.

In a scramble to save the PM’s authority, Downing Street said MPs will vote tonight on the principle of military action. But they will be offered a further vote on "any direct UK involvement".

No10 said: "The PM is acutely aware of the deep concerns in the country caused by what happened over Iraq.

"That’s why we are committed to taking action to deal with this war crime – but taking action in the right way, proceeding on a consensual basis."
Syria: Possible International Armed Intervention after Alleged Chemical Weapons Attack
Amnesty International

August 29, 2013

In recent days, a number of governments have signaled their intention to take military action against the Syrian government, which they hold responsible for the alleged chemical weapons attacks of 21 August. Scores of civilians, including many children, were apparently killed in the attacks on the outskirts of Syria's capital, Damascus.

Peruvians Unhealed a Decade After Truth Commission
Associated Press
By Franklin Briceno
September 3, 2013

For almost a quarter century, they have scoured the mountains of Peru's poorest region in search of the son hauled away by soldiers in the middle of the night. During their futile search, the couple found 70 clandestine burial sites and unearthed three dozen bodies.

After Javier was taken along with two school chums, they wrote the local military commander, who denied knowing anything. They wrote the Roman Catholic Church, the Congress and three successive presidents. But none answered Alejandro Crispin and his wife, Alicia.

"How is it possible that no one is in jail for 'disappearing' one's child?" asked Crispin, who at 69 is equal parts exhausted, bewildered and indignant. "How is it possible that the killers of innocents remain free?"

The couple's odyssey lays bare Peru's failure to address the unhealed wounds of thousands of families, most of them poor, Quechua-speaking peasants, who were the principal victims of the country's 1980-2000 conflict between Maoist Shining Path guerrillas and the government.

About 70,000 people died, just over half slain by rebels and over a third by security forces, according to estimates by a Truth and Reconciliation Commission of respected academics.

But 10 years after the commission issued its recommendations, few have been heeded: No state agency exists dedicated to finding and cataloging the bodies of the estimated 15,000 people forcibly disappeared in the conflict. Researchers blame most of the disappearances on security forces.

Few human rights abusers have been prosecuted. And fewer than two in five of the 78,000 relatives of people killed who applied for reparations received them, getting less than $4,000 each.
"As a nation, (Peru) has failed miserably to exhibit even the most basic empathy for those fellow citizens," said Eduardo Gonzalez, director of the Truth and Memory program at the International Center for Transitional Justice, a New York-based nonprofit that helps war-wracked countries recover.

Argentina and Chile have advanced far further in punishing perpetrators of war crimes, and even Colombia, which is still at war, has done more to provide reparations, he said.

Then-President Alejandro Toledo apologized to all victims of political violence when the commission released its report in 2003. But no other public or social institution has acknowledged errors, said the man who led the commission, former Catholic University president Salomon Lerner.

"It is a task still to be done," he told The Associated Press.

On the anniversary of the report's release, Aug. 28, hundreds marched in Lima in commemoration of the conflict's victims. Absent and silent were the country's political and military leaders.

To date, the bodies of 2,478 of the disappeared have been recovered.

Javier Crispin's is not among them.

He was 18 when soldiers stormed into the house in Huancavelica where he and two friends were working on a class report and hauled them away — presumably suspecting they were rebels, his father said. The city lies in Peru's poorest state and borders Ayacucho, where the insurgency was born and where more than 40 percent of deaths and disappearances occurred.

Several dozen Huancavelica residents said soldiers would stop youths on the street, order them to empty their backpacks to look for weapons — and take some away.

"The soldiers would pass through the streets shouting, 'Damn you, you sons of bitches, we can do whatever we want with you,'" said Giovana Cueva, whose brother Alfredo Ayuque was seized with Javier.

Unlike Guatemala, which received U.N. assistance to cope with its violent recent past, Peru has done little to catalog abuses and identify the dead.

Investigators from the prosecutor's office, aided by the International Committee of the Red Cross, were often spurred into action by Alejandro Crispin's findings.

"All these years I've had to dip into my own pocket to pay for information so I could find the graves, because no one helps," said the retired topographer, who spent all the $10,000 he had saved for the brick home he never built.

The truth commission was able to document only 24,692 deaths — 44 percent by state security agents and 37 percent by the Shining Path, with the other killers undetermined. A relatively low percentage of overall deaths in the conflict occurred in actual combat, leading to complaints by rights activists of meager prosecutions of war criminals.

Only 68 state security agents have been convicted of war crimes, while 134 have been acquitted, mostly soldiers, said Jo-Marie Burt, a George Mason University political scientist who studies the conflict.

Judges have not accepted that "in Peru there were systematic violations of human rights," she said. "Instead, in recent years they argue that there were only
'excesses,' and with those arguments they have absolved those who gave the orders."

Huancavelica’s human rights prosecutor, Juan Borja, said Defense Ministry officials have blocked all attempts to locate and prosecute those responsible for Javier Crispin's disappearance.

"I've made 80 inquiries ... for this and other cases and their answer is that they don't have the information," Borja said as he and a forensic archaeologist dug with pickaxes and shovels at a clandestine gravesite outside Huancavelica to which Alejandro Crispin led them.

The Defense Ministry did not immediately respond to requests for comment.

The Shining Path instigated the bloodletting and its leaders and more than 600 other insurgents were convicted of terrorism and jailed, but many mid-level rebel commanders guilty of war crimes evaded justice.

People such as Nicanor Torres have tried, mostly in vain, to set that straight.

The 52-year-old Lima tailor is obsessed with avenging the 1984 killings of his parents and two brothers by rebels in a remote part of Ayacucho state.

His sister Alejandrina, who was 4 at the time, hid under a neighbor's skirts as rebels cut her parents' throats in their home in the hamlet of Chaca, and he traveled from Lima to rescue her.

Torres said he knows who had his relatives killed: A rebel commander who robbed them of 1,000 sheep, a hundred head of cattle and 53 horses.

Torres said he tracked the man down and twice visited his house in Ayacucho's capital, Huamanga, intent on killing him. The first time, a woman answered the door. The second time, a girl. Both said the former Shining Path cadre wasn't home.

Nicanor and Alejandrina Torres returned to Chaca in June for the formal burial of their parents, whose remains had been exhumed a year earlier.

Villagers wept quietly as they carried 21 coffins from the town square, through a eucalyptus grove beside a river where frogs croaked, to its cemetery.

Alejandrina Torres said she was so shocked she didn't cry.

Only when she returned to Lima, in the solitude of her room, did the tears come: "I couldn't sleep for two days."

Nepal

Dahal Urges Regmi to Stop Adhikari Murder Probe

September 3, 2013

UCPN (Maoist) Chairman Pushpa Kamal Dahal has urged chief of the election government Khila Raj Regmi not to arrest his party cadres accused of killings perpetrated during the insurgency period.

At a meeting at Regmi’s official residence at Baluwatar on Tuesday, Dahal called for the revoking of investigations into such cases, arguing that prosecuting those cases would be in contravention of the Comprehensive
"Chairman Prachanda [Dahal] urged Regmi to immediately revoke the warrants and also urged the formation of a TRC, arguing that it [issuing warrants for insurgency-era cases] would not only be against the Comprehensive Peace Accord but would also force the scrapping of the agreement [between the government and the then CPN(Maoist)]," said Chudamani Khadka, personal secretary to Dahal.

According to Khadka, Dahal also told Regmi that the investigation should be carried out only after the formation of the TRC. The government has started investigations against those accused of killing Krishna Prasad Adhikari. Adhikari was killed in Chitwan in 2004. His father Nanda Prasad Adhikari and his mother have been staging a fast unto death at Bir Hospital for the last 43 days, pressing for the prosecution of the killers.

The UCPN(Maoist) Central Committee meeting, which concluded on Monday, endorsed a special proposal urging the government to form a TRC, arguing that reviving insurgency-era cases would be against the Comprehensive Peace Accord, which ended the Maoist armed insurgency. The meeting concluded that a section of society was actively conspiring against the party by reviving several insurgency era cases and the Adhikari couple´s fast was part of the same conspiracy.

However, Regmi´s press advisor Bimal Gautam said that the meeting with Dahal was focused on how to get the Adhikari couple to end their fast.

"Dahal expressed concern over how to end the Adhikari couple´s fast unto death. Regmi has said that the government is working seriously to end the fast while safeguarding their rights," said Gautam. According to him, Regmi urged Dahal to take the initiative to settle the matter from within the party.

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**Why Syria Still Won’t Be Referred to the ICC**

*Justice in Conflict*

By Mark Kersten

August 22, 2013

Forces loyal to Syrian President Bashar al-Assad probably used chemical weapons in an attack on the outskirts of Damascus. The United Nations responded that it will probably investigate what happened. Still, the International Criminal Court (ICC) probably won’t be investigating alleged crimes in Syria any time soon.

After two-and-a-half years of debilitating civil war in which some 80,000 – 100,000 people have been killed, the international community is no closer to bringing anyone suspected of war crimes and crimes against humanity in Syria to account. It isn’t because there’s a lack of injustices to investigate. The alleged chemical weapons attack on civilians is just the latest atrocity to garner the attention of advocates seeking referral of the situation in Syria to the ICC. But despite the outcry over the barbarity of this attack, it remains unlikely that that the ICC will find itself investigating atrocities in Syria. Here’s a few reasons why – some obvious, some perhaps less so.

The Continued Stalemate with Russia
The ongoing stalemate between Russia (and, to a lesser extent, China) and the rest of the Security Council is the most obvious and most widely reported reason as to why no ‘breakthrough’ on the Syria question has been achieved. In order for the ICC to intervene, the UN Security Council would have to refer Syria to the Court. In order to do so, Russia needs to either abstain or vote in favour of a referral. It isn’t likely to do so.

Russia, it is regularly argued, remains stubbornly supportive of the Assad regime. Russia has supplied Syria with "advanced missiles" and has consistently protected Assad from assertive action by the Security Council. In July, the Russian government suggested that it was the rebels who had used chemical weapons in their fight against the regime. In emergency meetings where the Council discussed how to respond to the alleged chemical weapons attack, Russia maintained that videos showing civilians suffering from the effects of chemical agents was a "premeditated provocation" and was likely fabricated by Syria’s rebel forces. This was in line with the response of the Syrian regime.

It is easy to believe that Russia will, come hell or high water, stand by Assad. Still, however deplorable Russia’s position on Syria has been, it has also proved a useful scapegoat to Western states eager talk the talk but unwilling to walk the walk.

Stalemate amongst Western States

It has regularly been argued that if only Russia would step aside, the rest of the international community could finally intervene in Syria. This unfortunate but popular characterization of the situation obfuscates the reality that the international community has long been intervening in Syria. Indeed, the civil war in Syria is something of a proxy battle with Russia arming the government and the ‘West’ arming the rebels (consequently, the (re)solution of the Syrian civil war is likely to depend on the relationship between Russia and the ‘West’ as much as what happens on the ground). The debate over intervention in Syria is thus not one of action versus inaction. And when observers suggest that the international community should be "doing more" in Syria, they are calling for some form of direct military intervention. For the many who continue to be wary that a direct intervention in Syria could spell disaster – for Syria and for the wider region – anything and anyone that blocks such an intervention is welcome news.

As for a judicial intervention by the ICC, the story is similar. The UN Commission of Inquiry on Syria has catalogued rebel crimes and, according to UN High Commissioner for Human Rights Navi Pillay, the Syrian rebels that the ‘West’ supports have likely committed war crimes. This certainly complicates any idea of Western states using the ICC as a tool to hurt the regime. In the initial stages of the civil war, it was foreseeable that the P3 could ‘use’ the ICC as they had in Libya – to pressure the Assad regime, bolster efforts to depose him, and legitimate the opposition. Now, however, the ICC would almost certainly investigate – and indict – both sides. But Western powers likely prefer no judicial intervention than one that targets the side they support.

While Russia (perhaps rightly) receives the brunt of the blame over the lack of concerted and forceful action in Syria by the Security Council, it is also worth asking whether any of the key Western states on the Council are truly prepared to give way to a military or judicial intervention. Given how much it took to convince the US that intervention in Libya (a much ‘easier’ place to intervene) and the reality that France and the UK don’t have the military muster to go it alone, it is highly doubtful that they would pursue any type of direct intervention. It also seems unlikely they’d want the ICC involved. Of course, being able to blame any ‘inability’ to intervene more forcefully on the big, bad Russians is highly convenient.
Israel and the Golan Heights

Over the last two years, the possibility of Israel coming under the jurisdiction of the ICC has emerged as a key point of contention in the international community (although less so now with the onset of peace negotiations between Palestine and Israel). Western states have been vehement in their view that Israel not come under the jurisdiction of the Court. But, in a rather odd twist of fate, referring Syria to the ICC could do just that.

As one commenter has suggested, "[t]he US will be reluctant to pursue ... a Syrian referral [because it] would include the Golan Heights, which would put territory under Israeli control within the Court’s jurisdiction."

Israel’s role in any solution to the Syrian crisis remains rather murky. But it wouldn’t be surprising if putting Israeli officials under the jurisdiction of the ICC is a more fiercely defended "red line" than the use of chemical weapons in Syria.

So No ICC in Syria?

The world of international criminal justice serves up too many surprises (see the unanimous Libya referral by the Security Council and the walk-in-surrender of Bosco Ntaganda in Kigali) to conclude that the ICC won’t ever investigate Syria (Russia signalled it might be interested in the idea but only once the violence has ended). But, for the moment, an ICC intervention in Syria remains highly unlikely. The only people it would serve are the victims of this brutal civil war. As it currently stands, that’s sadly not enough.

Can the ICC Prosecute for Use of Chemical Weapons in Syria?

EJIL Talk!
By Dapo Akande
August 23, 2013

Recent reports regarding the possible use of chemical weapons in Syria are very disturbing indeed. If it turns out that there is concrete evidence that chemical weapons have been used, many will hope this will (finally) provoke action by the Security Council. There will inevitably be calls for accountability of those responsible and hopes that the Syrian situation will be referred to the International Criminal Court (ICC). But even if the Syrian situation is referred to the ICC, can the Court prosecute for use of chemical weapons in Syria.

As Syria is not a party to the Statute of the International Criminal Court, the ICC will only have jurisdiction over events in Syria if there is a Security Council referral (Arts 12 & 13, ICC Statute). If the Council were to refer the situation in Syria, it is possible that attacks involving the use of chemical weapons may be prosecuted as part of a charge of crimes against humanity or as part of the war crime of intentionally directing attacks against a civilian population. In such a case, the use of chemical weapons would not form part of the core of the charge but would simply be the means by which the attack has taken place. Proving use of chemical weapons would not be necessary to sustain either charge. However, it is interesting to consider whether the use of chemical weapons would itself be a crime under the ICC Statute in the Syrian situation. I think the answer is yes, but, perhaps surprisingly, the answer is not as straightforward as one might have thought or would have hoped.

Does the ICC Statute Specifically Prohibit the Use of Chemical Weapons?

Despite attempts to include a provision that would have specifically and expressly criminalised the use of chemical weapons, the ICC Statute adopted in Rome 1998
did not mention chemical weapons by name (see Bill Schabas’ post here). However, Article 8(2)(b) of the Statute dealing with war crimes includes 3 provisions that might be interpreted as applying to chemical weapons. Art. 8(2)(b) xvii makes it a war crime to employ "poison or poisoned weapons". Para. xvii refers to "employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices. Para. xx makes it a war crime to employ "weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict. . . " However, that last provision only prohibits those weapons if they are subject to a comprehensive prohibition and included in an annex to the Statute. Unfortunately, no annex to this provision has been agreed so no one can (yet) be prosecuted under para xx.

An argument has been made that the provisions of the ICC Statute listed above do not cover chemical and biological weapons (see discussion of this argument in the article by my friends’ Amal Alamuddin and Philippa Webb 2010 JICJ at, pp. 1227-8). This argument is based on the drafting history of Art 8 where it was first proposed to include an explicit prohibition of chemical and biological weapons. However, those provisions were removed from the final draft at the same time as a broad provision prohibiting weapons causing unnecessary suffering was narrowed to extend to only those weapons specifically listed in an annex (which was never agreed). That latter provision was thought too broad as it could have extended to nuclear weapons. As Bill Schabas noted on his blog back in April:

"The removal of an explicit reference to bacteriological and chemical weapons coincided with a removal of the broad general provision capable of covering nuclear weapons. This was a compromise designed to appease some non-nuclear states, who felt that excluding nuclear weapons alone smacked of hypocrisy. After all, chemical weapons were the ‘poor man’s’ weapon of mass destruction."

The argument that chemical weapons are not covered by Art. 8 is thus based on the removal of the explicit prohibition and the fact that it was thought that it would be the annex to the Statute that would set out those weapons like chemical weapons that are deemed are indiscriminate and cause unnecessary suffering.

However, it is erroneous to interpret a treaty primarily by reference to drafting history. Under Art. 32 of the Vienna Convention on the Law of Treaties, the drafting history is only to be used as a supplementary or secondary tool of interpretation to resolve ambiguity. As Art. 31 of the VCLT indicates and ICJ has stated, the interpreter must start with the text of the treaty. Thus one must start by looking to see what the words of the treaty as agreed actually means. It seems to me that the words "poison or poisoned weapons" and more clearly "asphyxiating, poisonous or other gases" would cover a variety of chemical weapons. The latter wording is taken from the Geneva Gas Protocol which was intended to cover chemical weapons. Although the Chemical Weapons Convention of 1993 does not use this wording (referring instead to "Toxic chemicals"), this does not mean that the wording of the ICC Statute does not extend to chemical weapons. Although weapons not in the form of a gas are not covered by para xvii, it is also arguable that. The words ‘poisonous’ and ‘toxic’ are largely synonymous. The Oxford English Dictionary defines "toxic" as: "of the nature of a poison; poisonous". Moreover many chemical weapons cause death or injury by asphyxiation. Indeed, it would be difficult to give any meaning to para. xvii if it did not cover chemical weapons. [UPDATE: The last four sentences of this paragraph were amended/added after the post was originally written. The words deleted are clearly incorrect since para. xvii refers also to "analogous liquids, materials or devices", see previous para]

Although the Rome Statute can and should be read as also prohibiting chemical weapons, Art. 8(2)(b) applies only to international armed conflicts and the crimes in
the provisions just quoted were not repeated in the list, set out in Art. 8(2)(e), of war crimes in non-international armed conflicts. Thus, even assuming that these provisions apply to chemical weapons, the ICC was not given jurisdiction to prosecute the use of chemical weapons in a non-international armed conflict. The Syrian conflict, is considered to be a non-international armed conflict and under the 1998 Rome Statute, the matter would have been rather straightforward. The Court would have lacked jurisdiction to prosecute for the use of chemical weapons as a crime in and of itself. This is despite the fact that in the Tadic Case [paras. 119-128], the ICTY Appeals Chamber stated (in 1995!) that international law prohibited the use of chemical weapons in internal armed conflicts and suggested that this prohibition was also present in international criminal law.

Can the Security Council Refer Crimes in the Kampala Amendment?

The question that arises is whether a Security Council referral would be a referral that grants jurisdiction to the ICC on the basis of the ICC Statute adopted in Rome in 1998 or the amended ICC Statute.

Although the amendments to Art. 8 are only in force for a few State parties, the purpose of Security Council referrals to the ICC is to expand the jurisdiction of the ICC to cover acts by nationals of non-parties or on the territory of non-parties. On this view, the fact that Syria or any other State is not a party to the Art. 8 amendment ought not to stand in the way of ICC exercise of jurisdiction with respect to the amendment. As soon as the amendment was adopted, it became part of the ICC Statute. The amendment is not binding on States that have not ratified it but this is the same as the ICC Statute was not binding on Libya or Sudan (or persons connected with them) until the SC referred the situation in those countries to the ICC.

Significantly, although the amendment to Art. 8 does not specifically refer to Security Council, the aggression amendments also adopted in Kampala specifically envisage Security Council referrals. ICC parties assumed that in the case of a Security Council referral, the ICC can exercise jurisdiction over aggression committed by non-parties, or States that don’t ratify the aggression amendments, once the conditions set out in the aggression amendments are met.

However, there is one difficulty with this assumption that the Security Council referrals cover crimes added by amendments. That difficult arises from the second sentence of Art. 121(5) quoted earlier. That provision, which is directed at the Court, says that the Court "shall not exercise jurisdiction regarding a crime covered by [an] amendment" when committed by the national of, or on the territory, of a State party that has ratified the amendment. The correct interpretation of this provision has been the source of much controversy (especially as to whether it amends the jurisdictional provisions in Art. 12). However, what is relevant for our purpose is that in adopting the Art. 8 amendment, ICC Review Conference "confirm[ed] its understanding that in respect to this amendment the same principle that applies in respect of a State Party which has not accepted the amendment applies also in respect of States that are not parties to the Statute". Thus on this view, the Court shall not exercise jurisdiction over crimes covered by the amendment when committed by a national of a non-State party or on its territory. The purpose of this understanding was to provide equality between non ICC parties and those States parties that do not ratify an amendment.

If the Statute says the Court shall not exercise its jurisdiction (and does not provide any exception in Art. 121(5)) with respect to States that have not ratified an amendment, it could be argued that any Security Council referral must also exclude crimes covered by the amendment. As stated above this would seem inconsistent with the assumption of the parties with regard to aggression. It could be argued
that Art. 121(5) only applies in cases where the trigger mechanism for ICC jurisdiction is a state referral or the prosecutor investigating proprio motu. However, Art. 121(5) does not say this. However, one could imply this restriction from the fact that Art 121(5) seeks to provide a jurisdiction based on State consent, whereas SC referrals are not based on State consent.

In conclusion, were the Security Council to refer the situation in Syria to the ICC, the Court would have jurisdiction to prosecute specifically for use of chemical weapons.

Treaty Interpretation, the VCLT, and the ICC Statute: A Response to Kevin Jon Heller and Dov Jacobs
EJIL Talk!
By Dapo Akande
August 25, 2013

In response to my recent post on whether the ICC can prosecute for use of chemical weapons in Syria, my friend Kevin Jon Heller raises an important issue of treaty interpretation over at Opinio Juris. His comments to my previous post set out the issue quite clearly: should the ordinary meaning of a treaty text trump the intention of the parties with regard to that treaty? Also Dov Jacobs, in a typically excellent post at Spreading the Jam, raises the point about whether the VCLT applies to the ICC Statute at all.

My answer to Kevin’s question is yes! Ordinary meaning of a treaty text should trump the supposed intention of the parties to the treaty. This is what the VCLT says but I answer that question in affirmative because I also think the VCLT was right to say so. I agree with Dov’s point but only to a point. I do not think the VCLT rules on treaty interpretation should apply in their entirety to the ICC Statute but that does not mean they do not apply at all. I discussed these points as comments to my earlier post but thought it would be useful to make my responses a separate post.

The Usefulness/Uselessness of Drafting History and Intention of the Parties

The reason to prefer ordinary meaning to the supposed intention of the parties, particularly in a multilateral treaty, is because the intention of the parties can be and is often difficult to glean apart from the actual words used. In other words, one should only very rarely conclude that ordinary meaning and clear words do not reflect the intention of the parties. One might say, "but we can glean the intention from drafting history and if that differs from the words we should use that". The problem is that the drafting history is often fragmentary and incomplete, in the case of multilateral treaties. Some (usually very few) states will say something on the record about a particular text and the majority will not. Then the temptation is to draw inferences from the way in which the negotiations proceeded (what was changed, what was left out, when the changes were made, in what order etc). But all of that will usually be assumptions about what all the parties intended. They may be logical assumptions but are still assumptions.

Different States may have different reasons for making particular changes, inserting particular words etc. Indeed members of the delegations of the same State may have different thoughts with regard to particular texts. Apart from the point made above, a number of personal experiences regarding the usefulness of drafting history also lead me to the conclusion that it is often unreliable. In writing a piece some years ago about the ICC, I sent the piece to two people who were members of a particular State’s delegation at Rome in 1998. This is a State that was intimately involved in the negotiations and that takes these things seriously. The two members of the same State’s delegations gave me different responses about what was intended with respect to particular provisions of the Rome Statute! This is the same
State! When one then broadens that out to nearly 200 States the problem is, of course, magnified. A couple of weeks after the Kampala Review Conference, I attended a meeting in which a number of state representatives who were in Kampala were also present. I asked them about what was intended with respect to whether the consent of the alleged aggressor State would be necessary for the ICC prosecutions with respect to aggression and received different answers.

The particular issue of chemical weapons and the ICC Statute discussed in my earlier post and in Kevin’s post illustrates this problem of how we glean intention, apart from the words used. Kevin makes the assumption that by deleting the specific reference to "chemical weapons" at the same time as the reference to "nuclear weapons" was deleted, States were intending not to criminalise the use of chemical weapons directly. In my view, as likely is that many States simply could not stomach a text that would specifically mention chemical weapons while not specifically mentioning nuclear weapons. This might have been regarded as just politically unacceptable. This does not mean that they did not realise that the Statute actually does criminalise the use of chemical weapons. I do not think that the lawyers were so bad that they did not realise that in all probability chemical weapons were still caught by the wording of the Statute left in. Just like lawyers for the P5 are not so bad that they failed to realise that just because the words "nuclear weapons" were removed does not mean that it is possible to include the use of nuclear weapons in the provisions dealing with "employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices". Quite likely that the game being played was simply the political one of let’s not specifically mention these weapons, and, most certainly, let’s not mention one without mentioning the other.

However, whether one agrees with the speculations in the previous paragraph or not, drafting history does not answer the question about what all the parties to the treaty intended. Moreover the whole point of drafting history is to agree a text. It is that end point – the text – that is agreed by all. Whatever went before is not agreed by all.

The Application of VCLT Treaty Interpretation Rules to the ICC Statute

With regard to Dov’s post at Spreading the Jam, I would not say that the VCLT does not apply at all to the ICC Statute but I do think that despite the fact that the Rome Statute is a treaty, the VCLT rules on treaty interpretation do not and should not apply in their entirety to the ICC Statute. This is because the ICC Statute is an instrument of criminal law. The rule that one starts from the text should still apply however, when it comes to clarifying ambiguity I have argued elsewhere that we should not automatically refer to drafting history in the case of a criminal law instrument. There are other rules that also apply. I make this point in my essay on "The Sources of International Criminal Law" in The Oxford Companion to International Criminal Justice. Let me quote what I said there:

"the principle in dubio pro reo (or favour rei) requires that in the interpretation of criminal law instruments any doubt should benefit the accused. This principle has been referred to in ICTY and ICTR cases, and is explicitly provided for in Article 22(2) of the ICC Statute, which provides that: "The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted." In strict terms, the application of the principle in dubio pro reo should modify the application of the Vienna Convention methods of interpretation. This is because one of the limited reasons justifying reference to the preparatory work of a treaty is where the interpretation reached under Article 31 "leaves the meaning ambiguous or obscure." Once a decision is made that there is ambiguity, Article 22(2) of the ICC Statute requires that the meaning most favourable to the accused
ought to be adopted. The test of ambiguity required by the ad hoc tribunal has been a rather low one in that the principle of favouring the accused is said to apply "where there is a plausible difference of interpretation or application." Thus, where there is such a plausible difference of meaning, the Court ought not to proceed to attempt to use the preparatory work to resolve that ambiguity in a manner unfavourable to the accused. However, this does not mean that all reference to the preparatory work is excluded when interpreting the Statute. Such reference may be used to confirm a meaning already reached. Also, the presence of ambiguity may be revealed only by reference to the preparatory work since "the clearness or ambiguity of a provision [is] a relative matter; sometimes one [has] to refer [to] the preparatory work or look at the circumstances surrounding the conclusion of the treaty in order to determine whether the text was really clear and whether the seeming clarity was not simply a deceptive appearance." In such circumstances, the accused ought not to be precluded from relying on the preparatory work." [pp. 44-45]

Syria: War Is Looming, But Is Justice Possible?
The Globe and Mail
By Mark Kersten
August 27, 2013

Despite two years of an incessant civil war that has claimed at least 80,000 people, the United Nations Security Council has been mired in deadlock on how to respond to the violence in Syria. Yet the images and videos of civilians attacked with chemical weapons in the outskirts of Damascus has rocked the Syrian status quo. As Jon Western suggests, the chemical weapons attack may constitute "Syria’s Srebrenica," galvanizing the international community into taking action in a war they can no longer afford to ignore.

The massacre of 8,000 Bosnian Muslims at Srebrenica in 1995 became a crucial moment not only in the Bosnian war but for international justice. The International Criminal Tribunal for the former Yugoslavia declared that the massacre at Srebrenica constituted genocide; generals and political officials have been tried and convicted for their role in the carnage.

In the case of Syria, however, there have been no calls from the Security Council for chemical weapons attacks to be investigated by the International Criminal Court (ICC). Even as UN Secretary-General Ban Ki-moon declared that the use of chemical weapons in Syria constituted an "outrageous crime" that could not be met with impunity, there were no calls for the Council to refer Syria to the ICC. This begs the question: if the use of chemical weapons against thousands of civilians is a crime, why the silence on Syria and the ICC?

When it comes to justice in Syria, the ball is in the Security Council’s court. Because Syria is not a member-state of the ICC, in order for the Court to investigate any alleged crimes, including the use of chemical weapons, the Security Council would have to refer Syria to the Court. The Council has done so on two previous occasions: Darfur in 2005 and Libya in 2011.

In the earlier stages of the war, there were calls for the ICC to investigate alleged crimes in Syria. Led by Switzerland, a group of over fifty states, including France and the UK (although curiously excluding Canada) urged the UN to do so. However, as a result of the stalemate between China, Russia and Western powers on the Security Council, a referral never stood a chance.

Dominant thinking attributes most of the blame to Russia. If only Russia would stop defending the regime of Bashar al-Assad, meaningful intervention and perhaps even
an ICC investigation could take place. While Russia’s protection of the Syrian regime is undoubtedly vile, the barriers to justice in Syria are far more complicated.

Both the UN Commission of Inquiry on Syria and the UN’s Human Rights Commissioner, Navi Pillay, have claimed that Syrian rebels have committed war crimes. Those same rebels are backed by Western powers who have little interest in the ICC targeting their allies. We witnessed this dynamic in Libya. It was very useful to NATO’s military intervention that the ICC only targeted the regime of Muammar Gaddafi and not Western-backed Libyan rebels. In short, Western states aren’t keen on having the ICC investigate and indict the Syrian rebel groups they support.

A lesser known but equally important reason why the ICC is unlikely to be tapped to intervene in Syria stems from the fact that Israel controls the Golan Heights, a strip of land in southwestern Syria. Western states are steadfast against Israeli officials falling under the jurisdiction of the ICC. A Syrian referral could, paradoxically, do just that.

So what is the international community to do? The U.S. appears to be moving towards some type of military strike against Syria. Channelling shades of the unsanctioned invasion of Iraq in 2003, UK Foreign Secretary William Hague has stated that it would be legal to take military action in Syria without UN approval (Hague has not explained how such action would be legal under international law). Undoubtedly, any military action by Western powers will be framed as an act of justice and an attempt to hold those responsible for crimes in Syria to account. History shows, however, that justice is poorly served at the barrel of a gun or the tip of a cruise missile.

The wisdom of an ICC intervention in Syria will continue to be hotly debated. Some argue that an ICC referral is a "justified gamble" because it would alter the political dynamics of the war. Critics will undoubtedly respond that the involvement of the Court would complicate any attempt to negotiate peace between the Syrian rebels and the regime as it would give Mr. Assad little incentive but to continue fighting. Perhaps a middle-ground exists to pursue a creative option by credibly threatening both sides with the possibility of a referral.

Whatever one thinks about the wisdom of having the ICC intervene, the status quo has done nothing to help resolve the war. Peace negotiations have gone nowhere and mass atrocities remain uninvestigated. Of course, the ICC isn’t a silver bullet; alone, it cannot stop war crimes or end wars. But neither will a handful of military strikes against the regime. The ICC should at least be part of the equation.

With the creation of the ICC, expectations of how the international community should respond to mass atrocities have been fundamentally redrawn. When a regime murders its own people, we expect that accountability will be pursued. We expect the international to struggle in the pursuit of international justice, even if it’s not always easy or even possible to achieve.

Evoking belligerent rhetoric on the use of force without UN approval while ignoring justice and accountability will meet virtually no one’s expectations, least of all those of Syria’s victims.

**Emerging Voices: Making Room for the Distributive in Transitional Justice**

**Opinio Juris**

By Matiangai Sirleaf

August 27, 2013

The knee-jerk reaction to institute formal transitional institutions like trials or truth commissions following massive violence needs to be seriously rethought. For one, it is not evident that societies recovering from mass atrocities always need to be legally divided in to winners and losers. It is equally not evident that transitional justice and formal transitional institutions like trials or truth commissions are the only means of securing peace in societies recovering from mass violence.
atrocity will undoubtedly want to pursue truth-telling or trials. For example, surveys conducted in Sierra Leone and in Liberia indicate that punishing perpetrators was a low priority for victims. Additionally, data compiled for the truth commission in Liberia indicates that less than 5% of statement givers recommended utilizing a restorative or retributive justice approach. As such, much more attention needs to be given to truly "victim-centered" approaches following mass violence. One that attempts to respond to the needs of survivors of human rights violations for a more transformative form of justice, which places meeting basic needs (those needs that are central for survival including food, health, shelter, sanitation and education) front and center. For instance, in Liberia, a survey conducted by the Human Rights Center at U.C. Berkeley found that 45% of respondents indicated that the top priorities for victims were the "provision of housing" and "education, for their children." During my field research in Liberia and Sierra Leone, interviewees also did not indicate that any of these priorities were in particularly large supply prior to the conflicts. If anything, they expressed sentiments indicating that they were already marginalized and the conflicts just further exacerbated their precarious positions.

These findings suggest that the overwhelming faith that scholars and practitioners place in international criminal justice and formal transitional institutions to adequately respond to gross atrocities is misplaced. Transitional societies particularly following a conflict, are marked by injustice. In these societies, people do not simply experience injustice through specific acts of violence orchestrated by a couple of bad actors, but mainly through widespread structural forms of violence. Structural violence can include systematic discrimination in employment, land deprivations, forced deportations or removals, structural inequalities for particular groups or ethnicities in terms of access to political power, in voting or legislative representation, cultural power, or access to education amongst others. Liberia and Sierra Leone are paradigmatic cases of this. In Liberia, 60% of the respondents to the Human Rights Center at U.C. Berkeley’s survey indicated that "greed and corruption" were the root causes of the conflict, with 40% attributing it to ethnic conflict, 30% to poverty and 27% to inequality. Yet, historically, transitional institutions have not been specifically designed to address many of these root causes of conflict. Indeed, much of the existing literature ignores the particularities of post-conflict societies when designing transitional institutions.

The large number of those seeking redress in post-conflict societies, as well as the enormous number of perpetrators who must also be integrated back into society, means that a thicker conception of justice is required. One that goes beyond the confines of the legal institutions usually employed and impacts the lived realities of those that have been affected by war in some tangible way. In post-conflict societies, it is far less likely that a quick-fix mechanism such as a truth commission or a court alone would be able to address the underlying causes of conflict. Distributive justice approaches are both forward and backward-looking seeking to improve political and socio-economic conditions overall, but without presuming equality or ignoring historical grievances. The reason for pursuing distributive justice approaches is simple – by addressing real (and perceived) distributive inequities, we can help to prevent future conflicts. Accordingly, distributive justice efforts cannot afford to be treated as mere afterthoughts (if conceived of at all), where the aim of transitional institutions is to address the underlying causes that led to massive human rights violations. In short, scholars and practitioners need to broaden the scope of the post-conflict "tool-box" and pay much more attention to the use of distributive justice approaches following mass violence.

Could the Security Council Refer Only Assad’s Use of Chemical Weapons?
An interesting discussion recently broke out on twitter about whether the Security Council could refer the Syrian government's use of chemical weapons — and only the Syrian government's use of chemical weapons — to the ICC. Instead of breaking my thoughts into 60 tweets or so, I thought I'd be old-fashioned and write a blog post instead.

The issue raises a number of difficult and important questions. The first is whether such a narrow referral would qualify as a "situation" under Art. 13(b) of the Rome Statute, which provides in relevant part that "[t]he Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if... (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations." Interestingly, the answer may depend on the theory of interpretation we adopt — an issue that Dapo Akande and I recently debated here, here, and here. Read literally, Art. 13(b)’s "one or more of such crimes" language would seem to permit the Security Council to refer crimes committed only by Syrian government using chemical weapons – the referral would simply have to include at least one crime within the Court’s jurisdiction.

The literal interpretation of Art. 13(b), however, is completely inconsistent with the provision’s drafting history. All of the major scholarly works on Art. 13(b) agree that the drafters did not intend to permit the Security Council to refer crimes committed solely by one side of a conflict. Typical in this regard is Bill Schabas and Sharon Williams’ entry in the definitive Triffterer article-by-article commentary on the Rome Statute:

Indeed, this is why the concept of referral in the Rome Statute relates to "situations" rather than "cases." The language was adopted specifically to avoid the danger of one-sided referrals, which could undermine the legitimacy of the institution.

Antonio Marchesi makes a similar point in the Triffterer book with regard to, Art. 14, which includes the same "one or more of such crimes" language with regard to State referrals:

Although the proposal that the object of State complaints should be "situations" rather than specific crimes was well-received by the participants in the preparatory process, concern was expressed that the complainant State should not be able to "limit the referral to include crimes committed by one side to a conflict in a situation... or restrict the nationality of those who can be investigated and prosecuted. In other words, "the prosecutor must be free to investigate all persons who may be responsible for crimes within the Court’s jurisdiction in a situation."

There are, of course, ways to avoid the debate between literal and intended meaning. The most obvious would be to rely on Art. 31(4) of the VCLT, which provides that "[a] special meaning shall be given to a term if it is established that the parties so intended." I would argue that Art. 31(4) applies to the term "situation," because the drafter of Arts. 13 and 14 of the Rome Statute preferred "situation" to "matter" — the term used in earlier drafts of the Rome Statute — precisely because they believed that "situation" could not be construed as permitting one-sided Security Council or State referrals. Another way to avoid the literal/intended debate would be to say that Art. 13(b)’s "one or more of such crimes" language is ambiguous — it could mean that even one crime can be
considered a situation, or it could mean that the Court has jurisdiction over a situation only if it is convinced that the referred situation does in fact include at least one crime. If Art. 13(b) is ambiguous, the VCLT would permit reference to the provision’s drafting history, which makes clear that one-sided referrals are not situations.

Regardless of how we get there, I don’t believe that Art. 13(b) permits the Security Council to refer only crimes committed by the Syrian government to the ICC. (How those crimes were committed is secondary, although there is obviously an open question as to whether the Rome Statute directly criminalizes the use of chemical weapons. See my exchange with Dapo, linked to above.) But that leads to the second difficult and interesting question: can the Security Council make the referral anyway, as long as it invokes its Chapter VII authority? I don’t want to rehash that issue, which I explored extensively with Jennifer Trahan, Jens Ohlin, and many others here. Suffice it to say that I continue to believe that, because the ICC is an independent international organization and not a UN member state, the Security Council has no authority over the ICC that the Rome Statute does not explicitly give it. (The more interesting scenario would be a Security Council resolution ordering ICC member-states to use the ASP to amend the Rome Statute!) I am not alone in that view; Schabas and Williams take the same position:

If it triggers the Court’s jurisdiction, the Council must live within the parameters of the Statute with respect to such matters as jurisdiction. For example, it could not request that the Court consider the atrocities committed by the Khmer Rouge in Cambodia during the late 1970s because article 11 of the Statute clearly declares that the Court cannot judge crimes committed prior to the entry into force of the Statute.

The third and final question, then, is what the ICC would do if — despite the above — the Security Council attempted to refer the Syrian government’s use of chemical weapons to it. I would hope and expect that the Prosecutor would simply invoke Art. 53(1)(c) of the Rome Statute and refuse to act on the ground that such a one-sided investigation would not be in the interests of justice. Otherwise, the Court would have to reject the referral by invoking its proprio motu authority under Art. 19(1), which provides that "[t]he Court shall satisfy itself that it has jurisdiction in any case brought before it. The Court may, on its own motion, determine the admissibility of a case in accordance with article 17." A case cannot be admissible if it took place in a "situation" that was not properly referred to the Court.

The more interesting question is whether, if they concluded that the Security Council’s referral was defective, the OTP or the judiciary would simply have to refuse to act — or whether they could reinterpret the referral in a manner that made it consistent with Art. 13(b). Could, for example, the Court decide to treat the referral as including the use of chemical weapons by any party to the conflict in Syria? That would make the referral legally adequate, and it would not simply be a pretext to investigate the Syrian government given that the rebels have threatened to use chemical weapons, as well. In all honesty, I don't know whether such reinterpretation of a referral would be within the Court’s power. Nothing in the Rome Statute specifically permits it — but nothing specifically prohibits it, either.

Breaking: Judge Harhoff Disqualified from the Seselj Case

EJIL Talk!
By Marko Milanovic
August 28, 2013

I’ve just been informed by a reliable source that the special ICTY chamber appointed to hear Seselj’s motion to recuse Judge Harhoff from his case for appearance of bias has accepted the motion. (This is of course one more
chapter in the continuing Meron/Harhoff saga). That means that the Seselj case is probably going bust, as no stand-by judge was sitting in who could replace Harhoff. More to follow, once the decision is made public.

UPDATE: The decision is now officially available here. The Chamber split 2 to 1, Judges Moloto and Hall in favour, Judge Liu vigorously dissenting, finding that there was an appearance of bias. Money quote:

13. By referring to a "set practice" of convicting accused persons without reference to an evaluation of the evidence in each individual case, the Majority, Judge Liu dissenting, considers that there are grounds for concluding that a reasonable observer, properly informed, would reasonably apprehend bias on the part of Judge Harhoff in favour of conviction. This includes for the purposes of the present case. This appearance of bias is further compounded by Judge Harhoff’s statement that he is confronted by a professional and moral dilemma, which in the view of the Majority, is a clear reference to his difficulty in applying the current jurisprudence of the Tribunal. In the circumstances, the Majority considers that the Letter, when read as a whole, rebuts the presumption of impartiality. … 14. The Majority, Judge Liu dissenting, finds that in the Letter Judge Harhoff has demonstrated a bias in favour of conviction such that a reasonable observer properly informed would reasonably apprehend bias.

We’ll see what this means for the Seselj case and possibly other cases before the ICTY in which Judge Harhoff was involved. Dov Jacobs has more commentary here and here. For my part, the decision does seem to be based on a rather cursory and acontextual assessment of the Harhoff letter, as Judge Liu points out in his dissent, and is moreover not clear as to whether Harhoff is being disqualified for apparent or actual bias. And to the extent that Judge Harhoff had any difficulties in applying the current jurisprudence of the Tribunal (assuming that the jurisprudence he takes issue with would actually be central to the Seselj case), one assumes that any errors of law he made could be corrected on appeal.

As for Seselj, the trial itself has been badly mismanaged almost from the very start. Seselj himself surrendered to the ICTY some 10 years ago, on the eve of the assassination of the first democratically elected prime minister of Serbia, Zoran Djindjic, by a cabal of secret police, mafia and war criminal types, of which Seselj probably had some advance knowledge. From the very get go he set out to ‘destroy’ the Tribunal, inter alia by representing himself and being disruptive to the absolute maximum. When the Trial Chamber originally assigned to his case decided to appoint counsel and deny him self-representation, Seselj went on a hunger strike. Fearing the potential fallout from Seselj dying in custody after the death of Milosevic, the Appeals Chamber made an essentially political decision to reverse the appointment of counsel and change the Trial Chamber that would hear the case, adopting an absolutist position on self-representation that is certainly not warranted by human rights considerations (note that had Seselj been tried in Serbia itself, he would have to have been represented by counsel, as is the case in many other European jurisdictions in serious cases).

The presiding judge of the newly assigned Trial Chamber went on to demonstrate little evidence of competence, with Seselj more or less doing as he pleased in the courtroom, despite several prosecutions and convictions for contempt of Tribunal. The trial closed in March 2012, and the issuance of the judgment was scheduled for 30 October 2013. In other words, it took a year and a half to draft the trial judgment in what is on any objective account a mid-range, not particularly demanding case. And now that trial judgment might never be issued because of the whole Harhoff affair – I at least see no way of salvaging the trial that would not be unfair towards Seselj. Even if Seselj had been convicted, it is likely that the sentence he would get would be absorbed by the 10 years he spent in detention on
remand. In any event Seselj will soon be returning to Belgrade in triumph. He may not have ‘destroyed’ the Tribunal, but he was certainly happy to watch it destroy itself.

**Brief Thoughts on Judge Harhoff’s Disqualification**

*Opinio Juris*

By Kevin Jon Heller

August 29, 2013

I hate when interesting things happen while I’m sleeping. As I predicted, and as Marko Milanovic and Dov Jacobs have already well discussed, Judge Harhoff has been disqualified from the Seselj case as a result of the "private letter" he sent to 56 of his friends and acquaintances. Here is the key paragraph from the majority decision:

13. By referring to a "set practice" of convicting accused persons without reference to an evaluation of the evidence in each individual case, the Majority, Judge Liu dissenting, considers that there are grounds for concluding that a reasonable observer, properly informed, would reasonably apprehend bias on the part of Judge Harhoff in favour of conviction. This includes for the purposes of the present case. This appearance of bias is further compounded by Judge Harhoff’s statement that he is confronted by a professional and moral dilemma, which in the view of the Majority, is a clear reference to his difficulty in applying the current jurisprudence of the Tribunal. In the circumstances, the Majority considers that the Letter, when read as a whole, rebuts the presumption of impartiality.

Not surprisingly, I think this is the correct outcome. I agree with Marko that "the decision does seem to be based on a rather cursory and acontextual assessment of the Harhoff letter." But I doubt that’s an accident — my guess is that Judge Harhoff’s fellow judges did not want to embarrass him any more than was necessary to justify his disqualification. Differently put, I think a less cursory and less acontextual assessment would only have made Judge Harhoff look worse. In my view, Judge Harhoff’s evidence-free allegation that Judge Meron coerced his fellow judges into acquitting high-ranking military commanders because of his loyalty to Israel and the US demonstrates far greater actual bias in favour of conviction than his (also absurd) comment that the ICTY’s "set practice" until recently was to convict such commanders.

I disagree with Marko, however, that "to the extent that Judge Harhoff had any difficulties in applying the current jurisprudence of the Tribunal (assuming that the jurisprudence he takes issue with would actually be central to the Seselj case), one assumes that any errors of law he made could be corrected on appeal." True enough — but I don’t see how it’s relevant to whether Judge Harhoff should have been disqualified. A judge who wrongly decided a case because of a bribe could have his error corrected on appeal, as well, but I don’t think we would want him sitting on the case in the first place. Moreover, given that defendants have a right not to remain in detention any longer than necessary, I don’t see how it is sufficient to say that the Appeals Chamber could always reverse a wrongful conviction on appeal.

Finally, I think it’s very disappointing that the decision was not unanimous. Judge Liu was obviously well within his rights to dissent, but I find the dissent very unpersuasive. I’m particularly troubled by the following statements:

7. Such an interpretation fails to take into account, or at least acknowledge, the consideration that the Judges of the Tribunal are professional, experienced judges and that they may be relied upon to bring an impartial and unprejudiced mind to the evidence and issues arising in the case before them.
8. In my view, an evaluation of the relevant circumstances in the present case is crucial to a proper interpretation of the Letter and its contents. Such circumstances include, for example, the high eligibility standard for Judges of the Tribunal as embodied in Article 13 of the Statute, the oath taken by judges to exercise their powers "honorably, faithfully, impartially and conscientiously", and a judge’s professional experience.

9. In the instant case, the Majority at no point mentions or indicates that it took into account Judge Harhoff’s experience as a Judge of the Tribunal and a professor of law.

Judge Liu’s argument basically reduces to the idea that no one qualified to be a judge at the ICTY, especially a law professor, could ever be sufficiently biased to warrant disqualification. I have great respect for international judges, but that is not an acceptable approach to disqualification. A light thumb on the unbiased side of the scale because of a judge’s training and oath is one thing; relying on that training and oath to ignore the most inappropriate and tendentious public comments ever made by an ICTY judge is quite another. If Judge Harhoff’s letter was not enough to question his impartiality, what would be enough?

**Schabas on Chemical Weapons**

*Opinio Juris*

By Kevin Jon Heller

August 30, 2013

**Bill Schabas makes a great point regarding whether the Rome Statute should be interpreted to directly criminalize chemical weapons as part of its direct criminalization of poisoned weapons:**

I know that some colleagues are debating this elsewhere in the blogsphere. The argument seems to be that a broad construction of the notion of poison or poisonous weapons, whose use is criminalised by article 8(2)(b)(xvii) of the Rome Statute, might do the trick and encompass chemical weapons. It is fine for academics to make this argument, but it is a big trap for the United Kingdom, France and the United States and I doubt that they will fall into it. That is because if we consider chemical weapons to fall into the archaic category of poison or poisonous weapons, by some form of dynamic and evolutive interpretation of the Rome Statute, then we will also have to include nuclear weapons. What could be more poisonous than nuclear weapons? And London, France and Paris won’t go along with that.

Exactly! We call it "radiation poisoning" for a reason. Do defenders of the poison-weapons-includes-chemical-weapons position believe that the Rome Statute directly criminalizes nuclear weapons in the same way?

**Emerging Voices: Peace-Time Crimes Against Humanity and the ICC**

*Opinio Juris*

By Efrat Bouganim-Shaag & Yael Naggan

August 30, 2013

**Last February, a report by the Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea concluded that there are "nine patterns of violation" of rights, which "may amount to crimes against humanity, committed as part of systematic and/or widespread attacks against civilian population". The violations mentioned were, inter alia, in respect of the right to food, torture, arbitrary detentions, discrimination, the right to life and enforced disappearances. Following this report, a UN special panel has recently begun to investigate human rights violations in the DPRK. Persecutions, arbitrary detentions and torture**
Reportedly committed in Eritrea are another example of state-sponsored human rights violations, possibly amounting to crimes against humanity. These all-too-common situations, in which the civilian population in a given country is continuously subjected to human rights violations which could amount to crimes against humanity, presumably warrant the International Criminal Court’s attention.

Indeed, the framework of the Rome Statute allows for the investigation and prosecution of peace-time crimes against humanity; i.e. those taking place without any connection to an armed conflict. Nonetheless, a review of the current situations handled by the ICC suggests that crimes of this nature have been somewhat outside of the Court’s focus. In this post we will highlight what we identify as a gap between the Court’s subject matter jurisdiction and its practice.

Under article 7 of the Rome Statute, the definition of crimes against humanity does not require that the acts in question occur in connection with an armed conflict. In all the "situations" presently before the Court the charges brought forward have included crimes against humanity (except for the situation in Mali, in which no charges have been brought as of yet) (see Prof. Sadat’s recent study). Nevertheless, seven out of the eight current situations have to do with armed conflicts; the post-election violence in Kenya being the exception. Furthermore, an overview of the current preliminary examinations being held by the Office of the Prosecutor (as of August 2013) may suggest a similar focus on situations in which armed conflicts have occurred. Even events presently being discussed by the international community as meriting the Court’s attention involve armed conflicts, namely Syria.

While this trend is not necessarily a negative one, it certainly calls for further consideration.

One should recall that the absence of the armed conflict requirement in the Rome Statute is rooted in the evolution of the definition of crimes against humanity in previous international criminal law instruments. In the Nuremberg era, the Charter of the International Military Tribunal included a requirement for a nexus between the crimes against humanity charged and the armed conflict. While Allied Control Council Law No. 10 (the legal basis for the Nuremberg Military Tribunals) did not include this requirement, the NMTs’ jurisprudence on this matter was not uniform (see Heller). The statutes of the ad hoc international criminal tribunals also varied in this respect. The requirement was included in the ICTY statute (1993), but was eliminated as early as the Tadic Appeals Chamber’s interlocutory decision on jurisdiction in 1995, which cited customary international law in its reasoning. The ICTR (1994) and the hybrid SCSL (2000) statutes did not include this requirement in their definitions of crimes against humanity.

Although the majority of delegations at the Rome Conference were of the view that customary international law did not require a nexus to an armed conflict, this issue was not beyond dispute amongst the various delegations, as well as in the work of the Preparatory Committee. Despite the conflicting views, the outcome was that the ICC has had, from its nascence, ratione materiae jurisdiction over crimes against humanity committed during times of peace. It is against this backdrop, that the gap between the legal framework which allows for this jurisdiction, and the nature of the cases currently being prosecuted or investigated, is apparent.

Of course, some reservations are in order. Firstly, the reality described above regarding the current docket of the Court can be explained by the fact that four of the situations currently before it are a result of self-referrals by states party to the Statute, and two situations are the result of a UN Security Council referral. Thus, this gap is not necessarily a reflection of any particular prosecutorial policy. Secondly, jurisdictional issues are obviously an essential component which we have...
disregarded for present purposes. Finally, in three situations, Libya, Côte d'Ivoire and Kenya, crimes against humanity are the only crimes that have been charged. Whereas with regards to Côte d'Ivoire, Pre-Trial Chamber III nonetheless acknowledged the circumstances of a non-international armed conflict, the Situation in Libya, as referred by the UNSC, is not considered to be in direct connection with the armed conflict which later evolved in the country (see, Sadat, above, and Shenkman). In respect of Libya, we would suggest that even if we disregard the armed conflict that eventually evolved, the Security Council’s referral in this case might very well be reflective of what Prof. Sonja Starr has termed international criminal law’s "crisis mentality" ("crisis" referring to both armed conflicts and extraordinary upheavals). To a certain degree, one might suggest that the Kenyan situation before the Court is reflective of a similar "mentality".

In any event, the question remains whether there is more room for the international community to employ its criminal justice mechanisms with respect to peace-time crimes against humanity? The aim of this discussion was not to point to one situation, or a crime of a certain nature, as being preferable to another. Rather, its purpose was to outline the fact that under certain circumstances, the extent of peace-time crimes against humanity and their effects on daily lives of civilian populations may justify taking heed of these situations as well. The Rome Statute offers an array of tools, and whether or not stake-holders take advantage of this framework should be a result of a conscious deliberation and decision-making process.

Foreign State Officials Do Not Enjoy Immunity Ratione Materiae from Extradition Proceedings: The Not So Curious Case of Khurts Bat – A Reply to Dr. Roger O’Keefe EJIL Talk!
By Thiago Braz Jardim Oliveira
September 4, 2013

On November 15th of last year, Dr. Roger O’Keefe (Cambridge University) gave a very interesting talk at Oxford University titled "Immunities and Extradition: The Curious Case of Khurts Bat". I was not there, but benefitted from Oxford University’s excellent podcast system. As Dr. O’Keefe explained, the talk developed views he had already expressed in a case note he had written for the British Yearbook of International Law. The case in question was Khurts Bat v Investigating Judge of the German Federal Court, [2011] EWHC 2029 (Admin). The case involved a request by Germany for the extradition, from the UK, of Mr Khurts Bat, head of the Office of National Security of Mongolia. He was sought on account of crimes he supposedly committed in Germany, particularly the kidnapping, imprisonment and questioning of a Mongolian national. In the extradition proceedings before the English court, Mongolia attempted to prevent the extradition of her official by invoking two types of immunity, both of which failed. First, Mongolia relied on personal/ status immunity or immunity ratione personae on the basis that defendant was said to be a member of a Special Mission sent by Mongolia to the UK and also by virtue of Mr. Bat’s position as "a very senior governmental officer." Secondly Mongolia relied on subject-matter immunity or immunity ratione materiae, arguing that the acts in respect of which Khurts Bat was accused in Germany were committed on behalf of Mongolia.

It had been asserted before the English court that "[Mr. Khurts Bat was] entitled to immunity from criminal prosecution in Germany ratione materiae" (ibid., para. 63). Dr. O’Keefe considered this argument to be "wholly illogical". For him, to focus on whether the defendant was immune, as a matter of international law, from the courts of the requesting State (Germany), as opposed to from the jurisdiction of the English courts was plainly wrong. The point was crucial because the court eventually
held that, under international law, there was no immunity ratione materiae from the jurisdiction of a State with respect to acts done in that State. Since the acts were done in Germany and the English court considered immunity from German jurisdiction, it was held that Mr Khurts Bat did not benefit from immunity ratione materiae. As I explain below, I think the English court was right to treat the question as one relating to immunity from German jurisdiction and not from English jurisdiction.

Dr. O'Keefe's objection is primarily based upon the fact that the extradition process, under English law, is an exercise of criminal jurisdiction. Drawing upon the Pinochet (No. 3) precedent, he contends that immunity ratione materiae applies to extradition processes because they are themselves criminal proceedings. In support of his position, he points to a handful of statements by some of the Lords in Pinochet (Lord Saville, for example, said: "It is accepted that the extradition proceedings against [Senator Pinochet] are criminal proceedings. It follows that unless there exists, by agreement or otherwise, any relevant qualification or exception to the general rule of immunity ratione materiae, Senator Pinochet is immune from this extradition process". Pinochet (No. 3) [2000] 1 AC 147, 266). Also, Dr. O'Keefe observes that the certified point of law in Pinochet (No. 3), as put to the House of Lords by the Divisional Court from whose decision appeal was sought, was "the proper interpretation and scope of the immunity enjoyed by a former head of state from arrest and extradition proceedings in the United Kingdom in respect of acts committed while he was head of state" (ibid., 152). The consequence of his argument is that there should be no reason why immunity ratione materiae would be treated differently than personal immunities. By assuming there is an international rule of immunity ratione materiae from extradition process, Dr. O'Keefe is thus content to subscribe to Lord Phillips's hypothetical formula as a general truth: "The argument in relation to extradition has proceeded on the premise that the same principles apply that would apply if Senator Pinochet were being prosecuted in this country for the conduct in question. It seems to me that that is an appropriate premise on which to proceed." (ibid., 280).

I am not so sure that this is right. In fact, I would disagree with Dr. O'Keefe's extension of Lord Phillips's premise, deemed suitable in the circumstances of Pinochet (No. 3), to every extradition case and, in particular, to Khurts Bat. My disagreement rests on two points.

Immunity ratione materiae does not apply to extradition proceedings

First, legal processes from which foreign State officials enjoy personal immunities, as a matter of international law, do not necessarily correspond to the ones from which they enjoy immunity ratione materiae. Extradition is one such proceeding from which the latter type of immunity is not really required. At least one case clearly supporting this could be cited. That is the extradition proceedings before Swiss courts against Mr. Evgeny Adamov, a former Minister of Atomic Energy of Russia who was sought for prosecution both in the United States and in Russia. (Adamov v Federal Office of Justice (Switzerland, Federal Tribunal, 2005), Appeal judgment 1A.288/2005). The Russian government expressly insisted that Mr. Adamov, as a former official, enjoyed immunity from foreign prosecution before US courts. However, notwithstanding the fact that in Switzerland extradition also takes the form of criminal proceedings, Russia never challenged the lawfulness of these proceedings as such.

At the conceptual level, there is a fundamental distinction between immunity ratione materiae and personal immunities. The distinction is based on their different object. Unlike personal immunities, which apply even to measures that only create a mere risk of embarrassment for 'the effective performance of their [beneficiaries'] functions' (See Arrest Warrant case, paras. 53-54, 70), immunity ratione materiae is
a right attached to (certain) acts accomplished on behalf of a State. Its purpose is ‘to prevent the legality of such acts from being adjudicated upon in the municipal courts of a foreign state’ (per Lord Millet, Pinochet (No. 3) [2000] 1 AC 147, 270). It thus only applies, as a procedural bar required by international law, to domestic proceedings aimed at adjudicating, or having the practical effect of adjudication, of acts in respect of which foreign officials enjoy immunity. Extradition proceedings, for their part, whether or not their validity is controlled in a judicial process (the situation varies from State to State), may be said to be administrative in nature, for they do not judge the accused person’s acts. This is true even where courts judging an extradition request have to make sure that the charges for which the accused person is sought would be criminal if committed in their territory: the so-called double-criminality test. Such a requirement, as many others, generally in the form of treaty clauses safeguarding the right of the requested State to withhold extradition on certain grounds, is intended to ensure that the accused person’s individual liberty will not be unduly restricted. A decision allowing extradition does not have the effect of criminal conviction, any more than a refusal to extradite has the effect of acquitting the person charged of the offenses in respect of which extradition is denied. Therefore, neither practice nor theory seems to support the view that there is an international rule of immunity ratione materiae from extradition proceedings.

Pinochet (No. 3) does not support immunity ratione materiae from extradition proceedings

My second difficulty in following O’Keefe’s criticism of Khurts Bat is that, it seems to me, the working of immunity ratione materiae in Khurts Bat’s extradition was not that much at odds with Pinochet’s. In Pinochet (No. 3), the argument of immunity was never intended to foreclose extradition proceedings in limine litis either. That the House of Lords even considered immunity ratione materiae to exist in certain respects (in relation to charges of murder and conspiracy to murder in Spain) did not prevent Pinochet’s extradition to Spain from being authorised (in respect of torture-related charges), but only limited Spain’s ability to try Pinochet on charges other than those on which extradition had been granted.

It also cannot be ruled out that the House of Lords’ findings on immunity, as a merits defence similar to Khurts Bat, took into account the position of the defendant before the courts of the State requesting extradition (Lord Millet even said: "The plea of immunity ratione materiae is not available in respect of an offence committed in the forum state, whether this be England or Spain." [2000] 1 AC 147, 277): on the one hand, the exception to immunity in respect of torture-related charges extended to Spain; on the other, the immunity in relation to crimes committed in Spain to which Pinochet was entitled was thought to be applicable before Spanish courts – in the minds of their Lordships, there was no exception to immunity in relation to crimes committed in the territory of the forum.

Immunity ratione materiae in extradition proceedings?

Now, if there is no international rule of immunity ratione materiae that forecloses extradition proceedings, is there any rule that would prevent extradition of officials who may claim such immunity in the requesting State? Here, I believe Dr. O’Keefe’s attempt to make sense of why immunity ratione materiae was argued the way it was in Khurts Bat to be impeccable. The argument is that, unless international law had not granted Mr. Khurts Bat immunity before German courts, to order his extradition to Germany, where his prosecution was to take place, would be a breach of the UK’s duty of non-assistance within the meaning of Article 16 of the Articles on Responsibility of States for International Wrongful Acts (ARSIWA); the UK would be aiding or facilitating the commission of an internationally wrongful act, namely prosecution contrary to immunity. Dr. O’Keefe is, however, critical towards applying
This argument to Khurts Bat: he found it "unclear how it could be said to be [a breach of the duty of non-assistance], in fulfilment of an international obligation to extradite or the equivalent, to surrender a defendant to the requesting State in circumstances where the requesting prosecuting authority no more than asserts that the defendant is not entitled to procedural immunity before the requesting State’s courts, the latter being a question for eventual determination by those courts." (82 BYIL, p. 625); he found "also unclear by what domestic legal route it would be open to an English court to decline to exercise a statutory jurisdiction for fear of placing the UK in breach of its international obligations" (ibid.); finally, as developed in his Oxford talk, he considered that, unless denial of immunity by Germany were a "flagrant breach of international law" in accordance with Kuwait Airways Corporation v. Iraqi Airways Co [2002] UKHL 19, [2002] 2 AC 883, "Buttes non-justiciability" and act of State doctrines would most likely not have allowed English courts to inquire into whether prosecution of Mr. Khurts Bat by German courts would be contrary to international law (ibid.). The first difficulty concerns international law; the other two are strictly problems of domestic law.

There might, indeed, be practical difficulties in applying Article 16 ARSIWA in extradition cases. One of these difficulties is for States seized of an extradition request against a foreign official to establish, in view of the often unknown functioning of another State’s domestic law, whether the foreign official will ultimately be denied immunity. To the extent only international law is concerned, however, the answer to this question is a matter of fact. If facts are such that they render the duty of non-assistance altogether unworkable, the result would be that the question of immunity ratione materiae should not feature at all in extradition cases. In view of the existence of a conventional obligation to extradite, as Dr. O’Keefe seemed to suggest, extradition could certainly not be resisted on this ground. On the other hand, if there were a competing international obligation not to extradite because of Article 16 ARSIWA, no doubt the answer would be far less obvious. Does it, in itself, vitiate the application of this provision? I guess not. The problem would be similar to resisting extradition under a European Arrest Warrant on grounds of competing international human rights law obligations. The list of specific grounds for non-execution provided by the EU Framework Decision of June 2002 does not expressly include broader grounds derived from human rights. Yet, UK courts, under the Extradition Act 2003, have on some occasions considered the compatibility with the European Convention of Human Rights of extradition to certain States.

My final reaction concerns the relationship between international law and domestic law, notably English law: at the end of the day, if English courts cannot give effect to an international obligation, either to extradite or to withhold extradition, or decide to consider the issue of immunity ratione materiae as a merits defence of an extradition request, even if they are not strictly required to do so, it does not mean that what they do is or should be international law. If the International Law Commission is going to have a look at the problems here discussed, and I think it should, I suppose it will have to be mindful of this relationship.

"Specific Direction" Is Unprecedented: Results from Two Empirical Studies
EJIL Talk!
By James Stewart
September 4, 2013

Over the past months, I have written a range of blogs explaining my normative disagreement with the controversial new standard of aiding and abetting announced by the ICTY in the Perišić Appeals Judgment, which purports to add "specific direction" to the actus reus of aiding and abetting.

In this final blog on the issue, I deal with the question of whether "specific direction"
has any foundation in customary international law, but a complete list of my criticisms of this standard from a conceptual perspective, together with a short summary of each, is available online here. Instead of revisiting these conceptual criticisms, I here summarize two multi-year empirical studies into (a) all aiding and abetting incidents in the history of international criminal law; and (b) academic scholarship on complicity at national, international and theoretical levels.

I start by setting out the findings of the first study of aiding and abetting incidents in the case law of international criminal courts and tribunals, before I conclude by addressing the academic literature. In both of these areas, I have presented the material very succinctly for ease of digestion and debate. I have also included links to both datasets. As I hope will become quickly apparent, "specific direction" has no basis in customary international law or scholarly thought.

A. Case-Law in International Criminal Law Does Not Support "Specific Direction"

The first empirical survey analyses aiding and abetting by incident in all international courts and tribunals. The dataset, which represents two years worth of work, is presently undergoing a sustained process of final review, which will take several months further. I have, however, made a provisional version of this dataset available online here, together with a description of the methodology my research team adopted. Below, I detail a summary of our findings based on this dataset.

1. About a third of incidents of aiding and abetting in the case-law of international courts and tribunals mention the words "specific direction" or "specifically directed"

Of the 362 incidents we have coded, 33% mention "specific direction" or "specifically directed" in passing by citing the language in Tadic. We have inflated these figures, since a single mention of these two words at the beginning of a judgment is considered a reference for all incidents of aiding and abetting in the subsequent factual analysis, even if this test is never applied to incidents individually after the first casual reference.

As noted below, however, these references are very casual and, most frequently, not mentioned again anywhere in the judgment. 2. To the best of our knowledge, there is only one reference to "specific direction" prior to the Tadic Judgment

In order to constitute a rule of customary international law, there would have to be "virtually uniform" state practice confirming the existence of "specific direction" as an element of aiding and abetting.

To the best of our knowledge, however, there is only one vague reference to the term "specific direction" in case law dealing with aiding and abetting prior to the Tadic Appeal Judgment in 1999. In the Justice Trial of Josef Altstotter and others, Hebert Klemm was charged with aiding and abetting two counts in the indictment: crimes against humanity and war crimes. The United States Military Tribunal at Nuremberg found that Klemm had:

specifically directed the witness Mitzsche to obtain reports. His own testimony shows that he knew of the failure to take effective action in the case cited, and it is the judgment of the Tribunal that he knowingly was connected with the part of the Ministry of Justice in the suppression of the punishment of those persons who participated in the murder of Allied airmen. (p. 1099 my emphasis)

Given this very limited and vague support for this notion, there is no evidence of "virtually uniform" state practice prior to the Tadic Appeal Judgment.

3. Even when mentioned in the legal section of a judgment, "specific direction" is almost never applied to the facts of a case.
Of the 362 incidents of aiding and abetting in international criminal law that we have coded, "specific direction" is only applied as a substantive test to the facts of a case in 2% of incidents. Therefore, incidents where "specific direction" plays no part in aiding and abetting cases before international tribunals outweigh incidents where it does by a ratio of 50:1. While the Appeals Chamber in Perišić gives the impression that "specific direction" enjoys a sound basis in practice, this survey confirms the opposite.

4. In the vast majority of incidents, "specific direction" is either not mentioned at all, or only mentioned in a single sentence without elaboration.

The survey shows that in over 98% of aiding and abetting incidents in international criminal law, "specific direction" is either not mentioned at all in relevant decisions, or it is mentioned in only a single casual sentence without later application.

This again contradicts the assertion that the doctrine enjoys a solid grounding in customary international law or international case law. On the contrary, only a few courts have thought it necessary to take their casual reference to the language in Tadic seriously as a legal test.

5. To the best of our knowledge, there are no acquittals on any incident based on "specific direction" prior to Perišić before any court, national or international.

Our research suggests that before Perišić, no defendant was acquitted of any incident for failing to "specifically direct" assistance towards an international crime. This finding conforms with the thesis that "specific direction" was casual language adopted first in Tadic without support in customary international law. To some extent, a portion of subsequent cases rote cited this language, but very few ever applied it in practice. Those that did entered convictions.

6. The law governing aiding and abetting does not apply different standards where defendants assist "criminal organizations."

Although the issue is unclear in Perišić, some have interpreted the judgment as creating a new standard of aiding and abetting that distinguishes between aid provided to "criminal organizations" and assistance to other groups and individuals.

We find no support for that distinction in the dataset:

Of the 362 incidents we have coded, 12% mention "criminal organization" somewhere else in the same judgments;

Of the 362 incidents we have coded, "criminal organization" is mentioned with respect to aiding and abetting in 0% of incidents.

Therefore, there is literally no support for treating criminal organizations differently for the purposes of aiding and abetting within international criminal law.

B. Academic Scholarship on Aiding and Abetting Never Discusses "Specific Direction"

In a second empirical study, my research team has also analyzed discussions of complicity and aiding and abetting in leading scholarly publications in French and English. We have done so at three levels: (a) criminal law textbooks from thirty-one (31) national systems; (b) twenty (20) treatises on international criminal law; and (c) one hundred and forty six (146) articles on complicity. This list is far from comprehensive, but it does provide further grounds for reflection about "specific direction" that are worthy of presentation now. I intend to continue this collection into the future, so if you can add contributions, corrections or additions, I would be grateful for the input. Thus far, I conclude as follows:
7. To the best of my knowledge, national textbooks on criminal law do not mention "specific direction" as an element of accomplice liability.

If "specific direction" is a legitimate interpretation of aiding and abetting, one would expect to find some support for the concept in national criminal law. However, the textbooks on national criminal law that my research team consulted suggest otherwise. For a bibliography of these textbooks, see here.

Of these texts, the following is true:

Of the 31 textbooks on national criminal law we have coded, 10% or less mention "specific direction" in passing in some context;

Of these 31 textbooks, "specific direction" is mentioned in relation to aiding and abetting in 0% of cases.

Thus, the topic is not discussed with reference to aiding and abetting at all. When international courts usually emulate national law governing "modes of liability," the absence of any reference to "specific direction" in the context of complicity is telling.

8. All leading treatises on international criminal law, including those dedicated to "modes of liability" like aiding and abetting, do not mention "specific direction" in more than a sentence.

If "specific direction" were settled practice in international criminal law, one would expect scholars to have debated it extensively. "Modes of liability," after all, are one of the most discussed topics in the discipline, with numerous articles appearing within the discipline each year.

"Specific direction" also has major implications in connected fields, including business and human rights and Alien Tort litigation. There is, however, no detailed discussion of the concept in leading treatises on international criminal law.

From the leading treatises that we consulted, a bibliography of which can be found here, I conclude that:

Of the 20 treatises, 35% mention "specific direction" anywhere on any subject;

Of the 20 treatises, 30% or less mention "specific direction" casually in relation to aiding and abetting, by citing the language in Tadic;

Of the 20 treatises, "specific direction" is discussed in relation to aiding and abetting in more than a single sentence in 0% of the texts.

Again, the absence of any scholarly debate about the topic militates against the notion that this is established law.

9. None of the articles on the theory of complicity address "specific direction" in more than a sentence.

Discussions of international "modes of liability" frequently draw on leading scholarship from criminal theory. In the context of complicity, this literature is extensive. Nonetheless, there is no scholarly treatment of "specific direction" as an aspect of aiding and abetting, further suggesting that the idea was newly created by the ICTY in the Perišić Appeals Judgment after only a very little prior practice.

From this literature, a full bibliography for which is accessible online here, we conclude that: Of the 146 articles, chapters and books we have coded, 8% or less mention "specific direction" in any context;

Of the 146 articles, chapters and books we have coded, "specific direction" is
casually mentioned in relation to aiding and abetting in 6% of all texts;
Of the 146 articles and chapters, "specific direction" is discussed in relation to aiding and abetting in more than a single sentence in 0% of all texts;
Like the judgments we reviewed, academics too appear to have uncritically cited the language in Tadic. Nonetheless, for practitioners and scholars alike, the test remains highly unprecedented.

WORTH READING

Representational Practices at the International Criminal Court: The Gap Between Juridified and Abstract Victimhood
University of Cambridge Faculty of Law Legal Studies Research Paper Series
By Sara Kendall and Sarah Nouwen
August 21, 2013

In the context of a special issue on 'practices' at the International Criminal Court, this article focuses on the practice of representation, and in particular on the practice of representing victims. As political and social theorists such as Pitkin and Bourdieu have argued with respect to politics, representation does not merely reflect reality, it is constitutive of it. In the ICC, two practices of victim representation have been prevalent. The first is the rather novel and widely welcomed practice of representing victims as participants in ICC proceedings. The second is the older practice of the discursive invocation of victims as the telos of international criminal law. But these two practices lead in different directions. Victim participation in court proceedings has led to the juridification of victimhood — the legal categorisation of victims — and as a result of this juridification, very few individuals are actually personally represented in the Court’s proceedings. The discursive invocation of victims as the telos of the Court’s work has created a deity-like and seemingly sovereign entity — ‘The Victims’ — that transcends all actual victims and corresponds to no individual victim in their particularity. The result of the two practices is an increasing gap between the limited role that victims play in international criminal proceedings due to the juridification of victimhood and the continued presentation of ‘The Victims’ as the raison d’être of international criminal law. The overdetermined presence of the figure of ‘The Victims’ as a rhetorical construct obscures the representative challenges faced by conflict-affected individuals in accessing the form of justice that is practiced in their (abstract) name.

Victims and Consensual Proceedings – Do Victims Have a Right to Tell Their Stories in Criminal Proceedings?
University of Warwick School of Law Legal Studies Research Paper Series
By Regula Echle
August 27, 2013

This paper addresses whether there is a cross-border opinio iuris that victims have a right to tell their stories in criminal proceedings. Over the last few decades, the rights of victims have been strengthened in criminal proceedings. But there is only little discussion as to whether they have a right to tell their stories even in consensual proceedings, which aim to accelerate criminal proceedings and therefore place some restrictions on the rights of the parties -- and not only the rights of the accused, but also
the rights of the victims if they are regarded as a party to such proceedings at all. Therefore, the relevant legal frameworks of Switzerland, Germany, the United States of America and that of the International Criminal Court will be presented. Moreover, the issue of which rights are granted to the victims in these proceedings will be explored and if a general consensus on the rights of victims in such proceedings can be reached.

International Criminal Trials and the Disqualification of Judges on the Basis of Nationality
Global Studies Law Review
By Milan Markovic
August 27, 2013

Judges who sit on the International Criminal Court ("ICC") and other international criminal tribunals ("ICTs") are nationals of particular states and are elected to serve largely on the basis of nationality. Since the advent of the Nuremberg Tribunal, however, ICTs have perpetuated the notion that national identity is irrelevant to a judge’s performance of his or her duties. This Article will contend that judges at the ICC and other ICTs should not preside over trials concerning crimes allegedly committed by or against their fellow nationals. Judges should also consider recusing themselves from cases that strongly implicate the interests of their home nations. Other international tribunals prohibit judges from adjudicating cases involving their home nations or otherwise control for national bias in judging. Judges at the ICC and other ICTs undoubtedly strive to be independent and impartial, but they cannot be expected to act as representatives of the international community and its values in cases where they will be under psychological and economic pressure to rule in accordance with domestic interests. The parties to a conflict are also likely to use a judge’s nationality as a proxy for his or her capacity to be impartial.

The Mens Rea of the Crime of Aggression
Washington University Global Studies Law Review
By Noah Weisbord
August 31, 2013

The starting point for this exploration of the mens rea of the crime of aggression is its elements. The elements are an official ICC document clarifying the culpable mental state that applies to each aspect of the conduct, consequences, and circumstances constituting the crime. They are meant to "assist the Court in the interpretation and application" of the Rome Statute.

The first and still the most intrepid scholar to brave the elements was Professor Roger Clark. As a diplomatic representative for Samoa, he played a leading role in the drafting of the elements. Clark later wrote a paper in 2001 about this exercise — he called it anthropology of treaty-making — which also amounted to an elaboration on the work of the Preparatory Commission. His 2008 article, published in the New Zealand Yearbook of International Law, examines the way the elements of crimes were employed by the judges in the early jurisprudence of the ICC. In an article published just before the ICC Review Conference, Clark writes about negotiating the elements of the fledgling crime of aggression. This 2009 paper includes a revealing, if brief, discussion of the mens rea of the crime.
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