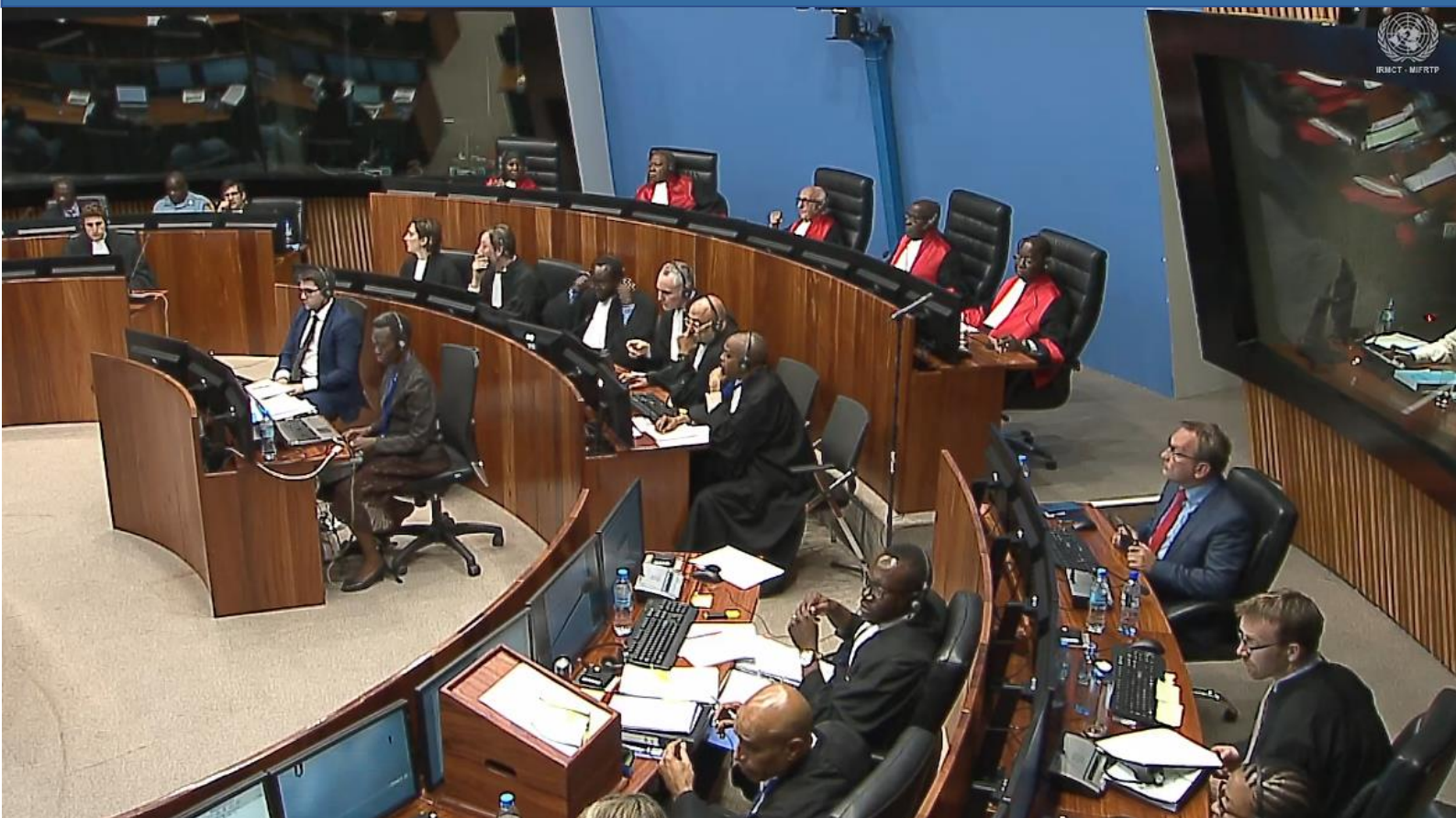




# ADC-ICT NEWSLETTER

ISSUE 125 - SEPTEMBER 2019



Ngirabatware © IRMCT

Head of Office: Dominic Kennedy  
Assistant: Kamil Ziolkowski

*The views expressed herein are those of the author(s) alone and do not necessarily reflect the views of the Association of Defence Counsel practising before the International Courts and Tribunals*

## IRMCT NEWS

### PROSECUTOR V NGIRABATWARE (MICT-12-29)

The Review Hearing in the case of Prosecutor v. Augustin Ngirabatware commenced on Monday 16 September and is scheduled to take place until Friday 27 September 2019 at the Arusha Branch of the Mechanism. On 20 December 2012, Ngirabatware was sentenced to 35 years of imprisonment by the ICTR. He was found guilty of direct and public incitement to commit genocide based on his speech at a roadblock on the Cyanika-Gisa road in Nyamyumba Commune. The Trial Chamber also found Ngirabatware guilty of instigating and aiding and abetting genocide, based on his role in

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distributing weapons and his statements at two roadblocks in Nyamyumba Commune on 7 April 1994, and of rape as a crime against humanity.

On 18 December 2014, the Appeals Chamber of the Mechanism affirmed Ngirabatware's convictions for genocide and direct and public incitement to commit genocide, while reversing his conviction for rape as a crime against humanity, and reduced his sentence to a term of 30 years of imprisonment.

On 8 July 2016, Ngirabatware filed before the Mechanism a request for review of his convictions, in light of the discovery of a new fact. On 25 July 2016, Judge Meron, then President of the Mechanism, assigned a bench of the Appeals Chamber..

On 19 June 2017, the Appeals Chamber granted Ngirabatware's request for review of his convictions and determined that a hearing should be held, to allow the parties to provide supporting and rebuttal evidence concerning the new fact.

The Review Hearing, initially scheduled for February 2018, was postponed on two occasions in order to provide Ngirabatware additional time to prepare and review the material disclosed by the Prosecution in the *Turinabo et al.* proceedings.

On 16 September, Paul Griffiths a telecommunications expert was the first witness to testify regarding the approximately 12,000 electronic phone communications. The second defence witness to be called on 16 September was a protected witness who provided information about why they recanted their original statement in the ICTR proceedings against Ngirabatware.



*Franko Simatović*

## Prosecutor v. Stanišić and Simatović (MICT-15-96)

On 18 June 2019, the Jovica Stanišić defence presented their opening statements with Lead Counsel, Mr. Wayne Jordash QC, asserting that their client was not involved in the commanding units deployed to Bosnia or Croatia. Stanišić and Franko Simatović are being retried for alleged war crimes, four counts of crimes against humanity and one count of violating the laws and customs of war, committed against non-ethnic Serbs in Bosnia and Croatia from 1991 to 1995. The Office of Prosecutor alleges that the crimes were committed during the execution of a joint criminal enterprise aimed at permanently and forcibly removing Croats and Bosnians from large parts of Croatia and Bosnia for the purpose of achieving Serb domination.

The defence stated that they will call witnesses who will testify that Stanišić was not responsible for the Serbian paramilitary or police units utilised during the war, which is one of the allegations included in the indictment. The defence argues that these Serbian Units which were active in Bosnia in 1995 were under the command of Radovan Stojicic, who was the Chief of Public Security Service of the Serbian Interior Ministry. Stanišić's defense stated that the State Security Services were structured to secure Serbia, not engage in conflict within the other Yugoslav regions, as well as show that the armed conflict in the Croatian areas of Krajina and Golbić was a defensive response.

In December 2015, Stanišić & Simatović pleaded not guilty after their acquittal from the ICTY in their first trial in 2013 was overturned when the Appeal Chamber ruled that there were serious legal and factual errors and ordered the case to be retried.

Since June, several witnesses have testified in closed session as protective measures have been granted by the Trial Chamber, some of which were requested by the Government of Serbia.

On 20 August, the court heard testimony from a Mile Bosnić who stated that the two accused were not involved in creating a training camp in a "Serb breakaway statelet" in the Golubić i camp in Croatia in 1991. On 4 September, a former police official from Bačka Palanka, Serbia was called to testify by the defence. He stated that in the summer of 1991, he volunteered, not forced by the Serbian State Security Service, to go to the Croatian region of Eastern Slavonia to respond to the rising tensions. On 11 September, the defence called Milenko Lemić, a retired intelligence officer from the Serbian Security Service. He testified that the paramilitary forces active in Eastern Slavonia were organized and managed by Serbian political parties and that he was unaware of any crimes committed.



Another defence witness, Nebojša Bogunović, testified that he had “volunteered” to go to the Eastern Slavonia region of Croatia, and that he was “not sent” there by the Serbian Interior Ministry.

### **Prosecutor v. Turinbo *et al* (MICT-18-116)**

The Turinabo *et al* case continues with preparation for trial as the date for trial has been [vacated by the Single Judge](#) pending further investigations by the Prosecution who have sought to amend the indictment to reflect new evidence obtained primarily from electronic devices seized from the Accused.

All accused, apart from Dick Prudence Munyeshuli have been provisionally released pending the start of trial and a Status Conference has been scheduled for 3 October 2019 at the Arusha Branch of the Mechanism.

### **Prosecutor v. Karadžić (MICT-13-55)**

On 28 March 2019, Radovan Karadžić filed his Notice of Sentencing Appeal before the Appeals Chamber. He contended that the Majority of the Appeals Chamber had erred in increasing his sentence to life imprisonment and that rather than remanding back to the Trial Chamber had deprived him of his right to appeal sentence. On 2 April 2019, Judge Agius, President of the Mechanism, dismissed Karadžić’s sentencing appeal without waiting for a response from the Prosecution.

On 5 April 2019, Karadžić attempted to file a motion before Judge Antonetti, as Senior Judge, seeking the disqualification of judges Agius and Meron. On 8 April 2019, the Registrar [filed a submission before the President](#) stating that there was no Case File that corresponds to the record submitted and that the Registry had not filed the Motion for Disqualification.

On 8 April 2019, Karadžić filed a [Motion to Compel the Registrar to File the Karadžić Motion](#). On 3 September 2019, the President issued a [Decision on the Motion to Compel the Registrar to File a Motion](#) denying the Motion. On 4 September 2019, Karadžić filed a [Motion to Reconsider the Dismissal of Notice of Appeal and to Disqualify Judges Agius and Meron](#) and on 6 September 2019, President Agius [assigned the matter to a panel of three judges](#).

On 8 September 2019, Karadžić filed a Motion Challenging Jurisdiction arguing that the President was not competent to assign the matter to a panel of three judges and should

have referred the matter to the most senior judge to act. A decision is still pending.

Since 2017, Karadžić has requested that video telecommunications be made available at the UN Detention Unit in The Hague. Karadžić has claimed that not being able to regularly communicate with his family via video communications is a breach of his right to family life. The President had ordered the Registrar of the Mechanism to initiate a project with the aim of implementing video telecommunications.

A pilot project was initiated however in July 2019 the [Registrar informed the President](#) that the Commanding Officer of the Detention Unit had not recommended allowing detainees to use video communication as it poses a risk to the administration of justice. Karadžić [appealed the decision of the Registrar](#).

The President ordered the Registrar to make further submissions and on 30 August 2019, the [Registrar submitted](#) that denying the use of video communications did not breach Karadžić’s right to family life and that there were other forms of communications which could be made available such as allowing detainees to send and receive emails from family and friends.

On 31 August 2019, Karadžić appealed the [Registrar’s decision on video calls at the Detention Unit](#) stating that the Registrar had failed to justify his violation of Karadžić’s right to family life that live far from the UNDU. A decision on the appeal is still pending.





# ADC-ICT NEWS

## ADC-ICT/ICLB Mock Trial – June 2019

The annual ADC Mock Trial was held from 17 until 24 June 2019 with 20 people participating. The training included five hands-on evening sessions covering oral arguments, legal drafting and opening and closing statements. The week concluded with a full day mock trial on a war crimes case in the Courtroom of the IRMCT in front of Judge Orie, Judge Morrison and Judge Nosworthy.

After the completion of the Mock Trial, three awards were given to outstanding participants: Best Prosecution Oralist was awarded to Mehjabeen Rahman and Best Defence Oralist was awarded to Adetokunbo Hussain. The best overall team was awarded to Fiona Noudjénoumé, Teodora Pasca, Nikiforos Spathopoulos.

A selection of photos from the event are available [here](#).



ADC-ICT/ICLB Mock Trial – June 2019

## Regional Training in the former Yugoslavia

Since the 2018 General Assembly, the ADC has developed its outreach program in the region of the former Yugoslavia and recently the ADC-ICT conducted two trainings located in Sarajevo and Belgrade.

On 6 June, the Association, in cooperation with the Criminal Defence Section of the Ministry of Justice of Bosnia and Herzegovina (OKO), held a training day on “Command Responsibility: analysis of military structure, defence strategies and advocacy skills” in Sarajevo. ADC-ICT President Dragan Ivetic and ADC Member Boris Zorko gave a one-day training, which was attended by approximately 100 lawyers from Bosnia and Herzegovina.

On 13 September, the ADC-ICT, in cooperation with the Union University’s Faculty of Law in Belgrade hosted a training on “Common Law Advocacy in Hybrid International Systems” in Belgrade. The training was attended by judges, defence counsel and prosecutors and consisted of presentations and interactive audience



13 September Training in Belgrade

participation. The training was conducted in the B/C/S language and was presented by several ADC members.

The trainers in Belgrade were, Dragan Ivetic, Novak Lukić, Slobodan Zecević and Boris Zorko.

Videos from these training events are available [here](#).

## Guantanamo Bay NGO Observer Program

The ADC-ICT has been granted NGO Observer Status at the Military Commissions in August 2019 by the Pentagon’s Guantánamo Bay Convening Authority. This grants permission for ADC-ICT representatives to travel to Guantánamo Bay, Cuba, or Fort Meade, Maryland to carry out the role as an observer at the Military Commission proceedings. There are currently only 26 participant organisations worldwide which have been granted permission to observe proceedings. Only members in good standing of the ADC-ICT are eligible to serve as observers.

For those interested in serving as a Military Commission Observer, information on upcoming observation dates is available on the [ADC website](#). Observation opportunities are posted as soon as they become available. Individuals interested in becoming an Military Commission Observer are encouraged to check the site often.



Guantanamo Bay



# ICC NEWS

## Trial Chamber issues first convictions under Indirect Co-Perpetration The Prosecutor v. Bosco Ntaganda (ICC-01/04-02/06)

by Anxhela Furreraj

*Visiting Professional, Office of Public Counsel for the Defence*

*The views expressed herein are those of the author alone and do not reflect the views of the ICC*

On 8 July 2019, Trial Chamber VI delivered its judgment in the case of The Prosecutor v. Bosco Ntaganda. Mr. Ntaganda was convicted as a direct perpetrator under article 25(3)(a) for certain parts of counts of murder as a crime against humanity and a war crime, and persecution as a crime against humanity, and an indirect co-perpetrator under Articles 25(3)(a) and 25(3)(f) for other parts of these counts. He was convicted as an indirect co-perpetrator for the remaining counts under article 25(3)(a). The Ntaganda Judgment represents the first time an Accused has been convicted for crimes as an 'indirect co-perpetrator'.

The term 'Indirect Co-Perpetration', has not been explicitly provided by the Rome Statute, rather, it has emerged through jurisprudence of the Court, primarily in Pre-Trial Chamber decisions on confirmation of charges. However, the Lubanga Appeals Chamber, implicitly recognized 'indirect co-perpetration', through a footnote, recalling that certain case law set forth "a fourth commission liability, whereby a perpetrator may commit a crime jointly with another person, where that other person commits a crime through yet another person". Now, over four years later, the Ntaganda Trial Chamber has referred to this jurisprudence when interpreting indirect co-perpetration and found it as "not a stand-alone mode of liability", but "a form of co-perpetration", confirming that a "simultaneous application of the two variants of individual criminal responsibility 'jointly with another person', and 'through another person', is possible as a matter of law, provided that all legal requirements are met".

Drawing on Lubanga Appeals Judgment and other jurisprudence of the Court, the Ntaganda Trial Chamber held that two objective elements are required in order to establish "individual criminal responsibility for commission of a crime jointly with another person and through another person":

1. "The existence of an agreement or common plan, between the accused and one or more other persons, to commit the crimes or to engage in a conduct which, in the

ordinary course of events, would result in the commission of the crimes; and

2. The control of the members of the common plan over a person or persons who execute the material elements of the crimes by subjugating the will of the direct perpetrators. The accused, though not required to carry out the criminal conduct directly and personally, must have a control over the crime, by virtue of his or her essential contribution to it and the resulting power to frustrate its commission".

As for the subjective elements, the Ntaganda Trial Chamber again referred to Lubanga Appeals Judgment and other jurisprudence of the Court and held that: "individual criminal responsibility requires that the subjective elements are fulfilled as required by Article 30 and any *lex specialis*".

A short review of the cited jurisprudence highlights that it may not be quite clear, whether there is a uniform standard when it comes to the required elements of the *actus reus* and *mens rea* of indirect co-perpetration as mode of liability, especially when considering the previous jurisprudence of the Court through which the concept of indirect co-perpetration has emerged, such as the confirmation of charges decisions in the cases of Katanga & Ngudjolo, Ruto & Sang and Ntaganda.

Mr. Ntaganda has filed his notice of appeal on 9 September 2019, following an extension of time which the Appeals Chamber granted pursuant to Rule 150 (2) of the Rules of Procedure and Evidence. Three of Mr. Ntaganda's grounds of appeal, and more accurately grounds 13, 14 and 15, challenge "Liability" citing error in "The Trial Chamber's findings on essential elements of indirect co-perpetration". Appellate briefs are currently due in the second week of October (with Prosecution request for extension previously denied by the Appeals Chamber and Defence request for an extension until 14 January pending decision), but it is clear that the ICC Appeals Chamber will now be called upon to clarify certain elements of this form of liability and perhaps set a uniform standard when it comes to the required elements for any conviction as an indirect co-perpetrator.



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# News Round-Up

*Click on the box to read the full article*

## **US Sanctions Against Iran's Foreign Minister and International Law, Just Security**

On July 31, 2019, U.S. Secretary of the Treasury Steven Mnuchin, imposed an elaborate set of financial sanctions against Javad Zarif, Iran's foreign minister. Mnuchin's actions were taken pursuant to Executive Order 13876, issued by President Trump on June 24, which imposed sanctions on Iran's Supreme Leader, Ayatollah Ali Khamenei, and authorizes the Department of the Treasury (Treasury) to impose sanctions on anyone appointed by him "as a state official of Iran" (among other categories)

## **PODCAST: Has international law failed Palestinians?, 972mag**

Israel has been able to leverage international law to its advantage much better than the Palestinians, says Noura Erakat, Palestinian legal scholar, human rights activist and author of Justice for Some: Law and the Question of Palestine, on the latest episode of The +972 Podcast.

In the book, Eraka proposes understanding it as another tool used to promote a political agenda. "The law is politics," says Erakat.

## **Varvitsiotis Calls on Turkey to Respect International Law, The National Herald**

ATHENS- Alternate Foreign Minister Miltiadis Varvitsiotis, in an interview with "Vradyni tis Kyriakis" newspaper, said that Greece "looks forward to and seeks good neighborly relations with Turkey", stressing that "Turkey, however, must respect International and European Law, must respect the Borders, the Territory, the Exclusive Economic Zone of Greece, which is the Border, the Territory and the Exclusive Economic Zone of the European Union. There can be no retreat."

## **Dubai ruler and Indian Prime Minister accused of violating international law, Blitz**

After months of silence, captain of a yacht named Nostromo, which was intercepted near India by a joint naval team of India and United Arab Emirates has issued a 'Press Statement' on August 29, 2019 claiming Dubai's ruler Sheikh Mohammed bin Rashid Al Maktoum and Indian Prime Minister Narendra Modi have violated international laws and committed crimes, which are punishable under the prevailing laws in the International Criminal Court (ICC).

## **Still No Law on Enforced Disappearance in Thailand, Human Rights Watch**

Once again, the International Day of the Victims of Enforced Disappearances on August 30 has come and gone, marking another year Thailand failed to fulfill its pledges to outlaw this heinous practice. International law defines enforced disappearance as the detention of a person by state officials and a refusal to acknowledge the detention or to reveal the person's fate or whereabouts.



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**Rejection of international law on the rise, Iran's foreign minister says, Yahoo News**

BEIJING (Reuters) - The rejection of international law is on the rise, Iranian Foreign Minister Mohammad Javad Zarif said on Monday, during a meeting in Beijing with the Chinese government's top diplomat, State Councillor Wang Yi.

**Iran Chairs AALCO Meeting on Cyberspace in China, Iran Front Page**

Chaired by the Islamic Republic of Iran, the 4th Working Group Meeting on International Law in Cyberspace of Asian-African Legal Consultative Organization (AALCO) was held in the Chinese city of Hangzhou on September 2-4, 2019.

The main topics on the agenda of the meeting were "Challenging Issues of International law in Cyberspace", "Peaceful Use of Cyberspace", and "Online Harmful Content".

**Merkel in Beijing says Hong Kong freedoms must be 'guaranteed', liveMINT**

German Chancellor Angela Merkel said Friday the rights and freedoms of people in Hong Kong "must be guaranteed" after meeting with Chinese Premier Li Keqiang in Beijing.

Hong Kong has been plunged into months of pro-democracy protests, and ahead of her three-day visit to China this week demonstrators in the semi-autonomous city appealed to the German chancellor to support them in her meetings with China's leadership.

**Yemen: Western powers may be held responsible for war crimes – UN, BBC News**

The UK, US, France and Iran may be complicit in possible war crimes in Yemen over their support for parties to the conflict there, UN experts say.

A new report warns the countries they could be held responsible for aiding or assisting the commission of violations.

**Drafting Committee of The International Law Commission Provisionally Adopts Draft Principles Protecting The Environment In Conflict, Live Law**

Drafting Committee of the International Law Commission (ILC/ the Commission) on July 8 provisionally adopted eight draft legal principles to strengthen environment protection before, during and after armed conflicts.

**Treatment of Prisoners in Edhibia Prison in Tindouf Camps Violates International Law, Morocco World News**

The investigation into the treatment of prisoners has drawn attention to serious human rights violations in the prison, including the use of torture.

Rabat – The release of a condemnatory report on the inhumane conditions in the Edhibia prison in the Tindouf camps reflects the growing concern from Sahwaris about the situation in the camps and the failures of the Polisario leadership.



# ARTICLES AND BLOGS

## BLOG UPDATES AND ONLINE LECTURES

### Blog Updates

**"International Criminal Law Symposium"**, by Alexander Kay. Blog available [here](#)

**"New Publication: Research Handbook on International Law and Peace, edited by Professor Cecilia Bailliet"**, by Gentian Zyberi, Blog available [here](#)

**"How does cyber warfare fit in the framework of International Humanitarian Law?"**, by Laura Krawczyk. Blog available [here](#)

### Online Lectures and Videos

**"International Law in Action: the Arbitration of International Disputes"**, offered by Leiden University. Course available [here](#)

**"Law and Justice"**, Kyle Harper, offered by University of Oklahoma. Available [here](#)

**"International Law in Action: A Guide to the International Courts and Tribunals in The Hague"**, by Leiden University via Coursera. Available [here](#)

## PUBLICATIONS AND ARTICLES

### Books

Nicola Palmer (2019), **"Courts in Conflict – Interpreting the Layers of Justice in Post-Genocide Rwanda"**, Oxford University Press

Shane Darcy (2019), **To Serve the Enemy – Informers. Collaborators, and the Laws of Armed Conflict**, Oxford University Press

Ian Hurd (2019), **"How to Do Things with International Law"**, Princeton University Press

Marco Sassòli (2019), **"International Humanitarian Law - Rules, Controversies, and Solutions to Problems Arising in Warfare"**, Elgar Publishing

### Articles

Barrie Sander (2019), **"The expressive turn of international criminal justice: A field in research of meaning"**, Leiden Journal of International Law. Cambridge University Press, pp. 1-22.

Joanna Nicholson (2019), **"Too High, 'Too Low', or 'Just Fair Enough'? Finding Legitimacy Through the Accused's Right to a Fair Trial"**, Journal of International Criminal Justice, Volume 17, Issue 2, May 2019, Pages 351-368

Frederic Megret, Marika Giles Samson (2019), **"Defiance, Defence, Repentance and What Lies Between: Assessing Defendants' Shifting Postures Before International Criminal Tribunals"**, Journal of International Criminal Justice, Volume 17, Issue 1, March 2019, Pages 151-177

## CALLS FOR PAPERS

**European Journal of International Law (EJIL)** has issued a call for a paper on the subject "Inequalities in International Law: The EJIL Symposium 2021"

Deadline: 1 November 2019, for more information click [here](#)

**Max Planck Institute for Comparative Public Law and International Law, Mx Planck Research Group Shades of Illegality in International Peace and Security Law** has issued a call for paper on subject "Contested norms of international peace and security law"

Deadline 24 November 2019, for more information click [here](#)

**European Society of International Law's Interest Group on the History of International Law, Ca' Foscari University of Venice** has issued a call for paper on subject "Waging war and making peace: European ways of inciting and containing armed conflict, 1648-2020"

Deadline 2 December 2019, for more information click [here](#)



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# EVENTS AND OPPORTUNITIES

## EVENTS

### **Rule of Law In The Western Balkans: Necessary Steps Ahead**

Date: 17 October 2019

Location: The Clingendael Institute, The Hague

For more details, click [here](#)

### **Structural Racism and Deaths in Police Custody in Europe: At the Crossroads of Criminal Law and Human Rights**

Date: 31 October 2019

Location: London, United Kingdom

For more information click [here](#)

### **The Strategic Development Goals, Inequality and the UN Human Rights Mechanisms: Patterns of Engagement**

Date: 05 November

Location: Oxford, United Kingdom

For more information, click [here](#)

### **International Law Conference**

Date: 12 December

Location: Rome, Italy

For more details, click [here](#)

## OPPORTUNITIES

### **Intern-Office of the Legal Adviser**

Organisation for the Prohibition of Chemical Weapons, The Hague

Deadline: 5 October 2019

For more information, click [here](#)

### **Legal Officer – Office of Legal Affairs**

Legal Officer, P4, New York

Deadline: 11 October 2019

For more information, click [here](#)

### **Legal Officer – United Nations Environment Programme**

Legal Affairs, Geneva

Deadline: 26 October 2019

For more information, click [here](#)

### **Intern – Legal Affairs**

International Residual Mechanism for Criminal Tribunals, The Hague

Deadline: 30 December 2019

For more information, click [here](#)

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