

# ADC-ICT NEWSLETTER

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# **IRMCT NEWS**

# Prosecutor v. Turinabo et al (MICT-12-29)

On 10 December 2019, Judge Joensen issued his Decision on the Motion for Joinder of the Ngirabatware and Turinabo et al contempt cases deciding that the two cases would be joined but with separate indictments.

The Indictment for contempt of court and incitement to commit contempt against Ngirabatware was filed by the Prosecution on 9 August 2019, and confirmed on 10 October 2019. The Indictment against the Accused in the Turinabo et al case was filed on 5 June 2018 and confirmed on 24 August 2018.

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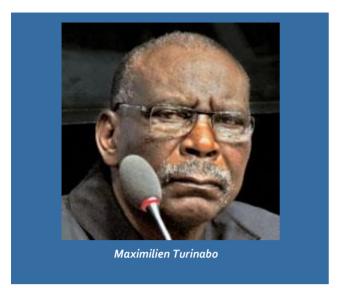












The request was opposed by Fatuma and Munyeshuli and Turinabo, Ngagijimana, Nzabonimpa, and Ngirabatware did not explicitly oppose the Motion and took no position on its merits.

The Accused argued that joining the cases may lead to potential prejudice to rights of the accused to an expeditious trial, amongst other things.

The Judge found that the factual allegations in the indictments of both the Turinabo et al case and the Ngirabatware case reflect "acts committed as part of a common scheme, strategy, or plan, and that a comparison of the factual allegations contained in the two indictments reveals significant overlap".

The Judge found that although the Turinabo et al case is at a more advanced stage of its proceedings, both remain in the pre-trial stage and considered that the start date of each trial would be within months of one another. Judge Joensen found that delaying the start of the trials by a few months would neither violate the Turinabo et al accused's rights to a fair and expeditious trial, nor would a joint trial infringe Ngirabatware's right to adequate time and facilities to prepare his defence.

The Single Judge therefore found that joining the two cases would avoid duplicating evidence as well as reduce the hardship to witnesses who may be asked to appear in each case. Moreover, the Judge found that joining the cases would result in judicial economy in spite of the probability of a longer trial.

On 20 December 2019, the <u>Decision on the Prosecution Motions Relating to Augustin Ngirabatware's Laptops</u> was issued. The Decision dismissed the Motion by the Prosecution to reconsider the decision to return Ngirabatware's laptops. The Single Judge did however

grant the forensic search Motion submitted by the Prosecution as the Judge found that the requested search of the laptops is proportional and targeted, and that it does not threaten to disclose material subjected to attorney-client privilege to the Prosecution. An independent forensic examiner is to be appointed to review the laptops and create a forensic image of them.

On 17 October 2019, the Single Judge granted the request of the Prosecution to amend the indictment to include new allegations of pressure, influence, and bribery of protected witnesses so as to reflect new evidence found within the year after the original indictment. The Single Judge considered that adding new charges would not delay proceedings unduly or prejudice the accused. The Single Judge therefore ordered the Prosecution to issue a new pre-trial brief.

All accused pleaded not guilty to the new charges brought against them. This decision came a week after the indictment against Ngirabtware. In the same decision, the Single Judge denied Munyeshuli's request for severance of his case due to failure to establish that this would be in the interest of justice or that there is serious prejudice warranting a separate trial.

On 1 October 2019, Munyeshuli was found to have reached the point of immediate release from his preventative detention by the Single Judge. He was unconditionally released to ensure fair proceedings. The Arrest warrant was vacated and Munyeshuli was released from UNDF. The full decision is available here.

During the Status Conference on 30 January 2020, it was said that a realistic timeline for the trial to begin would be in June 2020.

# Prosecutor v. Bralo (MICT-14-78)

On 31 December 2019, Judge Agius., President of the Mechanism, issued his <u>Decision on the Early Release of Miroslav Bralo</u>. Mr. Bralo became eligible for conditional









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release on 13 March 2018, having served two-thirds of his sentence

The President denied the request for early release after conducting a risk assessment which concluded that Mr. Bralo's "risk of a return to serious violent offending is significantly elevated". This Decision was based on medical reports and an evaluation of Mr. Bralo's behavior whilst in prison. Moreover, the evaluation found that Mr. Bralo has not participated in any of the offered rehabilitation, psychotherapy, or other crime processing programs.

# Prosecutor v. NTAWUKULILYAYO (MICT-13-34)

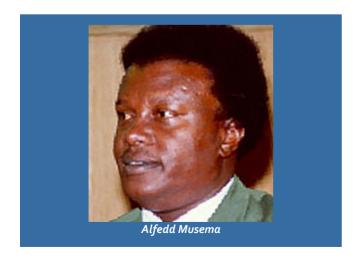
On 8 January 2020, President Agius issued his <u>Decision</u> on the application of Dominique Ntawukuliyayo for early release.

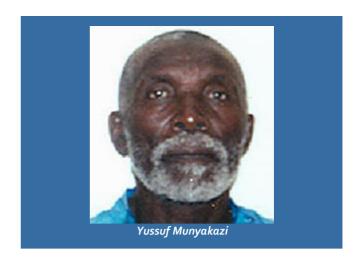
The request was denied on the grounds that Mr. Ntawukulilyayo had failed to demonstrate that there are exceptional circumstances which would warrant his early release prior to having served two-thirds of his sentence. The same request had been previously denied on the 8 July 2016 (Decision of 8 July 2016), on the same basis.

# Prosecutor v. Musema (MICT-12-15)

On 10 January 2020, President Agius issued his <u>Decision</u> on the request for reconsideration of the decision denying early release in the case of the *Prosecution v. Alfred Musema*.

The President denied the request, recalling the initial Decision of 7 August 2019 denying early release on the basis that Mr. Musema has not reached the eligibility threshold of serving two thirds of his life sentence. This threshold will be reached in February 2025. Furthermore, the President found that Mr. Musema had failed to demonstrate exceptional circumstances that would warrant early release prior to this date.





# Prosecutor v. Munyakazi (MICT-12-18)

The President of The Mechanism <u>denied the application</u> of Yussuf Munyakazi for early release on 29 November 2019 on the grounds that he had not yet reached two-thirds of his sentence and had failed to demonstrate compelling or exceptional circumstances that would warrant the granting or early release prior to that time.

# Prosecutor v. Karadžić (MICT-13-55)

On 28 October 2019, the three Judge Panel issued its <u>Decision on the Motion for Disqualification and Motion</u> Challenging Jurisdiction.

Karadžić had <u>requested the dismissal of Judge Meron</u> from his appeal case for appearance of bias in September 2018. Judge Meron withdrew himself from the case as a consequence.

In September 2019, Karadžić filed the first Motion before the President to reconsider the Decision of 2 April 2019, which provided that there is no basis for Karadžić to appeal the appeal judgment, and for the disqualification of both the President and Judge Meron from reconsidering the Decision of 2 April 2019.

Judge Agius as President assigned the First Motion to a Panel of three judges as the motion addressed his own disqualification, but remained seized of the part of the first motion pertaining to the reconsideration of the Decision of 2 April 2019. Karadžić then filed a Second Motion before the Panel requesting that it declared itself without jurisdiction and to refer the First Motion to the most senior judge able to act. Karadžić argued that President Agius lacked authority to appoint this panel given that the President himself is the subject of the request for disqualification.

The Panel Concluded that President Agius acted within his capacity as President and that the decision mainly concerns the ability of an applicant to seek disqualification of the President in the performance of his administrative functions. Karadžić invoked Rule 18 of the Rules of





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Procedure and Evidence in his arguments, which the Panel noted only relates to the disqualification of judges sitting in a case and it does not apply to the President acting in his capacity as President.

The Panel furthermore stated that the proceedings had concluded and that the only remaining option for further relief is review following the appeal.

The Panel recognizes that, had Rule 18 applied, it would not have had jurisdiction over the part of the first motion seeking the President's disqualification, as the President cannot assign a panel to rule on his own disqualification. The Panel would however have been able to rule on Judge Meron's disqualification. The Panel concluded that the most senior judge able to act in this case is Judge Meron himself, had Rule 18 been applicable.

The Panel stated that "Karadžić's attempt to advance claims of appearance of bias in order to reach his preferred decision maker must be rejected".

The Panel concludes that it does not have jurisdiction to consider the disqualification of President Agius and Judge Meron.

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

On 14 November 2019, the defence of Simatović called Witness Lucić. He testified that Stanišić and Simatović did not send paramilitary "Captain Dragan" to Croatia in 1991 to build a training camp for rebel Serb fighters. The indictment includes allegations that in 1991, the accused helped to establish a training center in Golubić, Croatia.

The next Defence witness, Dejan Plahuta, who also appeared in November 2019, said that three army brigades who fought in Bosnia shared the same 'Red Beret' name as Serbia's state security special ops unit. The Witness was a contract soldier in the Yugoslav Army between 1992 and 1994. He furthermore told the court that in the winter of 1993, three Yugoslav army brigades were deployed to eastern Bosnia to protect the Serbs and free territories occupied by Bosnian forces. These brigades were called

'Red Berets', the same name as the unit for Special Operations commanded by Simatović (SDB). The Witness moreover stated that Simatović was not his commander.

Witness Aco Draca, who testified at the end of November 2019, and was the Chief of State Security in the Republic of Serbian Krajina in Croatia, also testified that Simatović was not in charge of the military training camp in Golubić, where Serb fighters were trained. Draca stated that Simatović was in charge of surveillance equipment as an SDB operative and that he did not have any influence on "Captain Dragan", nor was he responsible for people from the Golubić center. The Prosecution claimed that Draca could not know of Simatović's activities in Croatia due to his position and that this would be sensitive information. Draca contested this and stated that Golubić was small and people knew about what was happening there.

In January 2019, Petar Djukic testified. He is a former high ranking Serb police Office in Croatia and Bosnia. He told the court that volunteer fighters in Bosnia were brought by political parties (mainly from the nationalist Serbian Radical Party) and not the SDB.

The defence case for Simatović continues.







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# Guantánamo Bay Military Commissions

First ADC Observers Attended the Proceedings in the Khalid Sheik Mohammed et al case

The ADC-ICT obtained NGO observer status at the Military Commissions in Guantánamo Bay in August 2019. This allows representatives of the ADC-ICT to travel to Guantánamo or Fort Meade (Maryland) to observe the proceedings. Only 26 organisations worldwide have been granted observer status.

Between 26 October and 9 November 2019, ADC-ICT Head of Office Dominic Kennedy and former President, Dragan Ivetic, observed the pre-trial proceedings in the Khalid Sheikh Mohammed et al case. They published a report including their observations on the proceedings.

Khalid Sheikh Mohammed, Walid bin Attash, Ramzi bin al-Shibh, Ammar al-Baluchi, and Mustafa al Hawsawi have all been accused of plotting the 9/11 attacks.

During the two weeks of hearings, the Military Commission heard testimonies from three witnesses in relation to the suppression of evidence gathered during interrogation (also called interviews or debriefings) of the defendants upon their arrival at Guantánamo in 2007, by the FBI. The Defence's strategy is to show that the interrogations were unreliable and corrupted by the CIA. The defence wants to demonstrate that the evidence obtained through interrogation in 2007 is unreliable for the same reasons that earlier interrogations had occurred at black sites, a military term for locations at which unacknowledged black operations or projects took place, and where 'Enhanced Interrogation Techniques' were used. Interrogation Techniques included water-boarding, sleep deprivation, stress positions and controlled fear.

The first witness to testify furing this period was Adam Drucker, a former FBI agent in the Bank Fraud Squad, who was then assigned as a counter-terrorism agent investigating the financial aspects of the 9/11 attacks. The witness was called by the Defence of Mr. Baluchi in relation to the suppression of interrogations of the accused, conducted by the FBI in Guantánamo Bay in 2007. Drucker told the court of his experience following the attacks in 2001, namely his travels to the United Arab Emirates and Pakistan within the context of the investigation. In Karachi, Pakistan, he was brought to the US Consulate to look at evidence collected from multiple raid sites, before being told to leave. The witness recalled that proper procedures were not respected in the handling of the evidence.

He then went to watch four interrogations in the course of two days at a site under the Pakistani authorities' control.



He recalled that a hooded prisoner was brought in, sat on the floor, and interrogated.

Drucker testified about the joint CIA-FBI team investigating terrorism. He discussed the modes of communication between the two agencies, and cables concerning potential questions for detainees held at black sites. He moreover stated that a plan was established to allow access of the FBI to the detainees once transferred to Guantánamo Bay.

Although Mr. Baluchi and Mr.Hawsawi are both accused of sending funds to the hijackers, Drucker did not interview them, but merely observed the interrogations which took place in 2007.

The cross examination by the Prosecution touched upon the subjects of the terror attacks before 9/11 in Tanzania and Kenya, the 2003 World Trade Center bombing and the attack on the USS Cole.

The Witness testified that they had found western union receipts at a hotel where one of the hijackers had stayed, and that this financial trail ultimately led to finding other accused, including Mr. Baluchi. In relation to the interrogations that occurred at Guantánamo Bay in 2007, he provided that they were more like conversations and that there was no indications that these "interviews" were done involuntarily. He furthermore stated that he prefers the use of the term interviews in reference to the 2007 questionings as he finds that interrogations occur when there is use of Enhanced Interrogation Techniques.

Mr. Sowards, Defence Counsel for Mr. Mohammed, asked Drucker whether he knew what happened to the accused at the black sites, to which he responded that he had heard rumors of the use of Enhance Interrogation Techniques (EITs). When Counsel mentioned the EITs used against his client, such as being hung from the ceiling naked for 12 hours at a time, and threats made to his family, he asked whether Drucker, knowing this, would re-categorize the interviews as interrogations, to which Drucker answered that he was not a medical professional and hence could not answer that question.















The second witness called by the Prosecution was the former Commander of Camp 7, where the accused were detained. He testified that he took custody of the accused upon their arrival at Guantánamo Bay in September 2006. He detailed the conditions in which the accused were detained. The witness stated that in October 2006, the detainees were allocated a partner with whom they could communicate via a hole in the wall. They were also visited by the ICRC.

The Witness informed that the guards could only have transactional conversations with the detainees. When asked to clarify, he stated that "the detainees could press a button in their cells to request water boarding... er, water bottles".

The Witness provided that the interviews conducted by the FBI happened between January and February 2007. He furthermore stated that the detainees could choose whether to attend the interviews or not and that he had no authority to force someone to go should they refuse. He recalled that Mohammed had agreed to meet with the FBI on four occasions. The Witness watched several of the interviews via video and says he never saw any unprofessional actions done by the FBI, and never received any reports of mistreatment.

When defence counsel started the cross examination, the red button used to cut the feed to the public gallery to avoid spillage of confidential information. When the feed came back, counsel showed photos to the Witness which the Witness confirmed were of Camp 7.

The witness lastly provided that he had no knowledge on the use of EITs, and that his guards had received training on the Geneva Conventions and no other government agencies were involved. The remainder of his testimony was heard in closed sessions over two days.

The final witness who testified was Michael Butsch who was called by the Prosecution. He is the current FBI Supervisory Special Agent. He was part of the Joint Terrorism Task Force of the FBI during 9/11, and later was assigned to the PENTBOMB team tasked with investigating the WTC, Pentagon, and 4th plane hijackings on 9/11. A large part of his testimony was either classified or in closed session.

The Witness was focused on the "Hamburg Cell" investigations, a cell which included 4 individuals involved in 9/11. He worked with German authorities during the investigation. He became the lead FBI investigator as to Ramzi bin Al-Shibh, one of the defendants on the case. Butsch testified in relation to videos, one of which showed bin al-Shibh in attendance at Al-Qaeda gatherings, meeting Bin Laden.

He knew that the CIA had initial custody of all High Value Detainees at Guantánamo. The Witness recognized that in 2007, Bin al-Shibh had not been given his full Miranda warnings as he was not formally charged and thus did not have a right to an attorney. He denied any use of intimidation tactics. Butsch furthermore stated that Bin al-Shibh never asked for an attorney during the 2007 interviews. Butsch also said that the interviewee was asked on several occasions if he wanted to talk and that it was stressed that this was voluntary.

He testified that Ramzi bin al-Shibh claimed Bin Laden had named him the Emir in charge of 9/11, although Butsch believed that Mohammed Atta was in fact named Emir. Ramzi bin al-Shibh had been in custody of the CIA, but the Witness stated that he has no knowledge of what EITs were used on him. He furthermore does not recall any complaints made by bin al-Shibh.

Butsch testified in relation to the conditions in which bin al-Shibh had been interviewed in 2007, and that he never appeared to be intimidated. The Witness recalled what bin al-Shibh stated during the interview, including his motivation for 9/11, and his beliefs, values, and further details about the planning of the attacks.

In cross-examination, the defence of Mr. Baluchi asked whether there was a CIA liaison within the joint terrorism task force. The Prosecution invoked national security privilege, prohibiting questioning or answering on the topic.

Several documents were shown to the witness which had been written by him, but later so heavily redacted that even he could not identify important aspects of the documents, such as why they were redacted, to whom it was sent, what the substance of the document was, or what leads arose from the document.

Counsel for Mr. Baluchi then went back to asking about the 2007 interviews with Ramzi bin al-Shibh, however the Prosecution objected as to how this was relevant to the case against Baluchi since they will not be using anything from those interviews against Baluchi. This was an important moment in the proceedings, and the judge and defence seemed surprised by this.

Counsel for Ramzi bin al-Shibh cross examined the witness on the issue of certain documents, and procedure during the investigation. Butsch stated that he knew of EITs being used against Ramzi bin al-Shibh while at the CIA.

The full report writren by Dragan Ivetic and Dominic Kennedy is available on the <u>ADC website</u>.

For those interested in serving as a Military Commission Observer, information on upcoming observation dates is available on the <u>ADC website</u>. Observation opportunities are posted as soon as they become available. Individuals interested in becoming a Military Commission Observer are encouraged to check the site often.





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# News Round-Up

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# UN Report Should Pressure Countries to Repatriate Foreign Fighters, Just Security

A new United Nations report found that from January 2018 to October, 2019, the Iraqi judiciary has processed over 20,000 terrorism-related cases, with thousands pending as of this January. The report, released Jan. 28, is the result of independent monitoring by the U.N. Assistance Mission for Iraq (UNAMI) of 794 criminal court hearings in Anbar, Baghdad, Basra, Dhi-Qar, Dohuk, Erbil, Kirkuk, Ninewa, and Wassit governorates.

# How Trump's Middle East plan would violate international law, Al Jazeera

US President Donald Trump's Middle East plan for Israel-Palestine, announced on Tuesday, could open the door to multiple violations of international law, according to experts.

The plan could lead to the annexation of parts of the occupied West Bank into Israel, including the vast majority of Israeli settlements, and was denounced by Palestinians, who were not involved in its making.

# **Crime against humanity in Kashmir,** The News International

According to the latest reports leaked from some Indian media sources 23 Kashmiris have been killed during the long ordeal of curfew. More than 8000 young boys have been taken away from their mothers and reportedly taken away to isolated camps.

# Bosnian MPs Reject Legislation to Criminalise Genocide Denial, Balkan Insight

The House of Peoples, the upper house of the Bosnian parliament, voted on Thursday against changing the criminal code of Bosnia and Herzegovina to criminalise the denial of genocide and war crimes.

### Germany: 'President Assad officials' charged with torture in Syria, BBC News

A court in Germany has charged two suspected former Syrian intelligence officers with crimes against humanity.

One of them, Anwar R., is suspected of being involved in the torture of at least 4,000 people in 2011-12. This resulted in the deaths of 58 people. The other suspect, Eyad A, is charged with torture in at least 30 cases.















Opinion: Legacy of the International Tribunal for Rwanda isn't spotless — but it is remarkable, Deutsche Welle

The International Criminal Tribunal for Rwanda identified murder and rape as a means of perpetrating genocide, setting a precedent for the world. That's why we should cherish international justice, writes Fred Muvunyi.

### War crimes, torture and impunity, New Age

AFTER more than 18 years of the US war on terror there are still 40 prisoners in Guantánamo Bay in Cuba, guarded by 1,800 US soldiers and an additional 800 civilian workers in place. Five of these prisoners have long since been cleared for release by US agencies including the FBI, the military and the State Department.

# How the UK is facilitating war crimes in Yemen, Oxford University Press Blog

More than 100,000 people have died in the war in Yemen since March 2015, including over 12,000 civilians killed in direct attacks. All parties to the war have committed violations of international law, but the Saudi-led coalition—armed and supported militarily and diplomatically by the United States and the United Kingdom primarily—is responsible for the highest number of these reported civilian deaths.

# Was Dresden a war crime?, The Spectator

The literature of second world war bombing campaigns is surprisingly extensive. The books written in Britain largely focus on the night sorties by RAF Bomber Command, but the equally destructive second world war campaigns by the US 8th Air Force (daylight raids on Germany) and the Luftwaffe (the Netherlands, the Blitz on the UK) are covered too.

# **Explosive Weapons Devastating for Civilians,** Human Rights Watch

A diplomatic meeting on February 10, 2020 in Geneva should endorse a political declaration that would better protect civilians in populated areas from these weapons. Human Rights Watch and Harvard Law School's International Human Rights Clinic submitted an analysis of the draft elements of the declaration to the meeting.

# Behind Myanmar's Military Alibi: A Path for Compliance with the ICJ's Order to Protect Rohingya, Just Security

In the wake of the ruling from the International Court of Justice (ICJ) ordering Myanmar to prevent genocide against the Rohingya going forward, the initial excitement was tempered by pragmatics—how this important court order can be enforced so that it actually protects the 600,000 Rohingya who remain in Rakhine State.















## **BLOG UPDATES AND ONLINE LECTURES**

# **Blog Updates**

"The future is female: Gender representation in international courts and tribunals" by Andrea Samardzija. Blog available <u>here</u>

**"Towards International Recognition of the Genocide of the Rohingya?"** by Ruby Axelson and Wayne Jordash QC. Blog available <a href="https://example.com/html/>here">here</a>

"ICJ Order on Provisional Measures: The Gambia v Myanmar" by Priya Pillai. Blog available <u>here</u>

### Online Lectures and Videos

"Introduction to International Criminal law' offered by Case Western Reserve University. Course available <a href="here">here</a>

"International Law In Action: Investigating and Prosecuting International Crimes" by Leiden University via Coursera. Available <a href="here">here</a>

"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**

Predrag Dojčinović (2020), "Propaganda and International Criminal Law: From Cognition to Criminality", Routledge

Jerome de Hemptinne (2019), " Modes of Liability in International Criminal Law", Crambridge University Press

Immi Tallgren, Thomas Skouteris (2019), "The New Histories of International Criminal Law: Retrials", Oxford University Press

Simon McKenzie (2019), "Disputed Territories and International Criminal Law: Israeli Settlements and the International Criminal Court", Routledge

### **Articles**

Rebecca Sutton (2019), "Enacting the 'civilian plus': International Humanitarian actors and the conceptualization of distinction", Leiden Journal of International Law. Cambridge University Press, pp. 1-21.

Rebecca Barber (2019), "Accountability for Crimes against the Rohingya: Possibilities for the General Assembly where the Security Council Fails", Journal of International Criminal Justice, Volume 17, Issue 3, July 2019, Pages 557-584

Mikkel Jarle Christensen (2019), "The Judiciary of International Criminal Law: Double Decline and Practical Turn", Journal of International Criminal Justice, Volume 17, Issue 3, July 2019, Pages 537-555

# **CALLS FOR PAPERS**

European Society of International Law with the Montaigne Center for Rule of Law and Adminsitration of Justice has issued a call for a paper on the subject "Rule of Law from Below. Individuals and Civil Society as Protectors of the Rule of Law in Troubled Times"

Deadline: 15 March 2020, for more information click here

The Brazilian Journal of International Law calls for submissions for a special issue on populism and International Law and has issued a call for paper on subject "Populism and International Law: Global Sourth Perspective"

Deadline 15 April 2020, for more information click here

 $\textbf{EJIL: Talk! Calls for submissions for the Hague Yearbook of International Law} \ \, 31^{\text{st}} \ \, \text{Volume}.$ 

Deadline 15 April 2020, for more information click here















# **EVENTS AND OPPORTUNITIES**

# **EVENTS**

IBA 6<sup>th</sup> Annual Conference of War Crimes Committee: Challenges in a new landscape for ICL

Date: 28 March 2020

Location: The Hague, netherlands For more information click here

Mega-Sporting events and human rights: What role can EU sports diplomacy play?

Date: 05 March 2020

Location: The Hague, Netherlands For more information, click here Applicable Law before International Courts and Tribunals

Date: 12 February

Location: London, United Kingdom

For more details, click here

European Public Policy Conference: Our Climate, Our

Future

Date: 27-28 March 2020

Location: The Clingendael Institute, The Hague

For more details, click here

## **OPPORTUNITIES**

# Assistant Analyst (Temporary), P1

Independent Investigative Mechanism for Myanmar,

Geneva

Deadline: 12 February 2020 For more information, click <u>here</u>

# Legal Officer, P4

Department of Management Strategy, Policy, and Compliance. Office of Human Resources, New York

Deadline: 17 February 2020 For more information, click <u>here</u>

# Legal Officer (Temporary), P4

Office of High Commissioner for Human Rights, Geneva

Deadline: 17 February 2020 For more information, click <u>here</u>

### Associate Legal Officer (Temporary Job Opening), P2

Independent Investigative Mechanism for Myanmar,

Geneva

Deadline: 19 February 2020 For more information, click <u>here</u>



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