ADC-ICT NEWSLETTER

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MICT NEWS

Prosecutor v. Karadžić(MICT-13-55)

On Tuesday 30th of January, Radovan Karadžić appeared in front of President Meron for a status conference, which happens every four months. The President asked him if he had any specific concerns, and Karadžić proceeded to express his profound regret for what happened to Slobodan Praljak, openly querying how did Praljak manage to get the poison in a UN Tribunal.

He also mentioned his health status and qualified it as "relatively good". He praised the "excellent medical service", and the very good understanding from employees of the Chambers regarding different issues (especially laptop issues) in the past. However, he did not feel

the same way about the food served at the prison, saying that it is hardly bearable.

Karadžić explained that the food situation is dependent on the host country, and he did not blame the UN for the situation UN detainees are in, however this led him to question whether they are UN detainees or detainees of the host countries. In fact, he said that the food situation is the same in all prison units, not only for UN prison areas. He explained that nutrition is very important to good health, and that if matters continue this way, his health will not last.

He also stated that a high proportion of UN detainees are highly educated and feel deprived of culture while in detention. Books longer than 100 pages are not allowed and most of them are not translated in English or in the prisoner's language.

The President acknowledged Karadžić's concerns and explained that progress is being made in reinstituting supply of Balkan food and specialties.

Furthermore, Kate Gibson (Co-Counsel of Karadžić) brought the subject of Karadžić's laptop to make video calls with the Balkans. She also proceeded to thank the Registrar for successfully completing the first phase of video-communication testing, and expressed her hope that the second and final phase will be implemented in the following weeks and not the following months.

She argued that the cost of calls (0.47 EUR per minute) are deducted from Karadžić's account, which is too expensive for him.

The President answered that the IT services have placed an order for the laptop and tested it. He expressed hope that the IT services will get the laptop to Karadžić as soon as it is modified for security reasons.

Finally, Peter Robinson (Lead Counsel of Karadžić) presented several suggestions to increase efficiency, saying that he is aware that budget cuts are coming. His first suggestion was to combine the appeals hearing and the status conference in one day. Furthermore, he stated that if there is a new witness, this witness should testify during the combined session.

The President closed the session after acknowledging Robinson's suggestions and reassuring that every point will be carefully considered.

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

The case Prosecutor v Stanišić and Simatović resumed after winter recess on the 23 January 2018 with the testimony of witness RFJ-144, who was granted protective measures of pseudonym, image and voice distortion.

The witness testified about a meeting between Milan Martić, the former Interior Minister of the Serb Autonomous District of Krajina, and Jovica Stanišić, whom Martić, according to the witness, called his "true and only commander". The witness further testified regarding paramilitary forces led by Željko Ražnatović (aka Arkan) in Slavonia, Baranja, and Srem. The witness completed his testimony on 25 January.

The next witness to testify was Prof. Robert Donia, from 30 January until 2 February 2018. Prof. Donia testified as an expert witness as he is a historian, formerly employed by the ICTY's Office of the Prosecutor, and currently a lecturer at the University of Michigan. He testified about the evolution of political relations and military operations in the former Yugoslavia. Prof. Donia has previously been a witness in 15 trials at the ICTY.

Prof. Donia presented his findings on the mutual goals of the Serbian and Bosnian-Serb authorities during the war, key among which was the demographic and political separation of the three nations - Serbs, Bosniaks and Croats. According to Prof. Donia, there was a common idea of connecting all Serb territories from Croatia and Bosnia and Hezegovina to Serbia. However, the authorities did not share analogous strategies for achieving their goals.

The *Bemba* Appeal Hearing: Three Issues on Command Responsibility

by Mattia Pinto

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

From 9 to 11 January 2018, the appeals hearing in the case against Jean-Pierre Bemba Gombo were held before the International Criminal Court (ICC). On 21 March 2016, Mr Bemba was found guilty by Trial Chamber III (TC III) of crimes against humanity and war crimes and sentenced to 18 years of imprisonment (ICC-01/05-01/08-3343) It was found that he had effective authority and control over the *Mouvement de Libération du Congo (MLC)* and in that position he failed to take all necessary and reasonable measures to prevent or repress the commission of crimes by his subordinates during military operations in the Central African Republic from 2002 to 2003. Mr Bemba appealed the conviction (ICC-01/05-01/08-3434-Red) and the sentence (ICC-01/05-01/08-3450-Red). The Prosecution appealed the sentence, seeking a prison sentence of no less than 25 years (ICC-01/05-01/08-3451).

This is the second time at the ICC that an appeal against a conviction has been brought before the Appeals Chamber (the first was in Lubanga) and only the first time an appeal hearing (which is not mandatory) was held. Moreover, the Bemba appeal hearing was the first to consider, under the provisions of the Rome Statute, questions of a military commander's responsibility for the conduct of troops under his/her control. In the previous issue (#118),Rebecca Campbell discussed the questions issued by the Appeals Chamber in advance of the Bemba appeal hearing.

This brief comment will be limited to three crucial aspects of command responsibility that were litigated by the parties during the hearing, as indicated in the headings below.

Overview of Command Responsibility

Command responsibility attributes criminal liability to military commanders (or civilians with a superior-subordinate relationship over perpetrators) for certain international crimes committed by their forces. Article 28 of the Rome Statute provides that individual criminal responsibility of commanders attaches "as a result of" their failure "to take all necessary and reasonable measures" and requires both an "effective command and control" over the direct perpetrators and that they "either knew or [...] should have known" that the crimes were being or about to be committed. A similar principle is codified in Article 86 of the 1977 Additional Protocol I to the 1949 Geneva Conventions and in the Statutes establishing the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) (where it is also known as "superior responsibility"). Unlike at the ICC, these provisions do not require the commander's "effective command and control" (but only "effective authority and control"), nor that the crimes should be the result of the commander's inactivity. In addition, the *mens rea* requirements are worded differently, demanding that the superior knew or "had reason to know" about the crimes.

I- How must the "should have known" standard be interpreted?

One of the issues at the centre of the Bemba appeal hearing was how the "should have known" standard in Article 28 of the Rome Statute should be interpreted, and whether it differs from the "had reason to know"

standard in article 7(3) of the ICTY Statute (ICC-01/05-01/08-3579).

An interpretation of the "should have known" standard had been given by the ICC's Pre-Trial Chamber II (PTC) in the Bemba Confirmation of Charges Decision (ICC-01/05-01/08-424). Here, the judges held that "the 'should have known' standard requires the superior to 'ha[ve] merely been negligent in failing to acquire knowledge' of his subordinates' illegal conduct" (para. 432). This cuts directly against what the ICTY has consistently maintained, namely that negligence is not the standard. In Čelebići (IT-96-21-A), the ICTY Appeals Chamber held that the "had reason to know" standard does not encompass negligence in the failure to obtain information about crimes, but requires that the superior "had in his possession information of a nature, which, at the least, would put him on notice of the risk of such offences by indicating the need for additional investigation" (para. 239).

In the Bemba appeals hearing, the Office of the Prosecutor (OTP) relied on the PTC's jurisprudence. In the words of Mr Matthew Cross, Appeals Counsel for the OTP, "[t]he essence of the 'should have known' standard [...] is an objective test based on the negligent failure of the superior in appropriate circumstances to acquire information of subordinates' crimes". Further, he argued that Article 28 is unique "in introducing the 'should have known' standard for military and paramilitary superiors only, a basis for liability which does not exist in customary international law". For this reason, the 'should have known' differs from the 'had reason to know' test "because it does not require that information about subordinates' crimes was already 'available' to the superior". According to the OTP, it "simply requires that the circumstances as a whole [...] triggered the superior's duty of inquiry, and that if [the superiors] had done so, they would have found out about their subordinates' crimes".

By contrast, the Bemba Defence argued that "a mental connection" between the crimes of the subordinates and the commander is crucial to avoid transforming command responsibility into a strict liability offence. Therefore, as maintained by Professor Kai Ambos, Associate Counsel for the Defence, the 'should have known' standard should be interpreted in line with Article 86 of Additional Protocol I and of the 'had reason to know standard' in the ICTY Statute. These provisions – Prof Ambos continued – refer only to information already in possession of the commander and on the basis of which it is possible to conclude that the subordinates may commit or have committed crimes.

II- Does command responsibility require causation between the failure to act and the crimes?

A further matter of contention during the Bemba appeals hearing was whether causation is required in the context of Article 28, and, if so, what degree of nexus is needed. Causation seems to be a novelty of the Rome Statute which, unlike in the Statutes and jurisprudence of the ad hoc Tribunals, demands that the commission of the subordinates' crimes is "a result of" the commander's inaction.

However, in the Bemba Confirmation of Charges Decision (ICC-01/05-01/08-424), the PTC considered that Article 28 does not require the establishment of a "but for" causation between the commander's failure to prevent and the crimes committed. According to the PTC, what is necessary to prove is "that the commander's omission increased the risk of the commission of the crimes" (para. 425).
TC III adopted the same position in the Trial Judgment against Mr Bemba, without further elaboration (para. 211) (ICC-01/05-01/08-3343). This gave rise to disagreement amongst the three trial Judges. In their Concurring Opinions, Judge Ozaki argued for an assessment of the foreseeability of the subordinates' crimes, while Judge Steiner opined that the required degree of nexus should be that of a "high probability".

The parties in the Bemba appeal hearing took different positions. For the Defence, "[t]he nature of command responsibility demands a strict causality standard", whereby the commander's omission is "a trigger" and "a cause" of the subordinates' crimes. They thus favoured the "but for" test as the only standard that would "link a commander to the actual crimes committed on the ground".

In response, the Prosecution argued that "causation is not a required element for liability under Article 28". According to the OTP, this is in line with customary international law, as recognised and applied by all the ad hoc Tribunals, which "has firmly rejected any such element for superior responsibility".
Accordingly, "when the evidence establishes that a commander failed to prevent a crime [...] this will almost always be sufficient from an evidentiary point of view to show that he failed to exercise control properly over his subordinates, thus resulting in crimes".

3- Does the contextual element of "knowledge of the attack" under Article 7(1) of the Rome Statute also apply to the commander?

The elements of crimes against humanity include the requirement that "[t]he perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population". The Appeals Chamber heard arguments on whether, in cases of command responsibility for crimes against humanity, this requirement applies either only to the direct perpetrator of the crimes or also to the commander.

The Bemba Defence's position was that "both the direct perpetrator and the accused require the same mens rea". Mr Peter Haynes QC, Lead Counsel, argued that for the commander to be convicted of crimes against humanity, he/she needs to have met the specific mental element of that crime. Accordingly, – he added – "it is almost impossible [...] to imagine how a commander who has to have knowledge that an attack comprising multiple acts under Article 7(1) conducted in pursuance or furtherance of a State or organisational policy can be guilty on the basis that he should have known".

The OTP responded that the Rome Statute and the Element of Crimes make clear that "when assessing whether a certain conduct constitutes a crime against humanity, the only mens rea that needs to be proved is that of the perpetrator, and this includes his knowledge or intent that his conduct or her conduct was part of a widespread attack". Conversely, the mental state of the commander who failed to prevent the crimes under Article 28 "is not determinative of the question of whether the offence constitutes a crime against humanity". For the commanders, it must be only proven that they knew or should have known that their subordinates' crimes were part of the attack, but "[i]t is not necessary [...] that they knew or intended their own conduct to be part of the attack".

"How the Appeals Chamber will determine these issues will set the foundation for the ICC's approach to command responsibility"

Conclusion

The Bemba appeals hearing provided a valuable insight into the various arguments on how command responsibility should be interpreted at the ICC. The Rome Statute's provisions on this mode of liability differ from those in the Statutes of the ad hoc Tribunals. This raises the question of whether these differences justify taking a divergent approach at the ICC, as the Prosecution argued in respect of the mens rea standard or as the Defence in respect of causation.

How the Appeals Chamber will determine these issues will set the foundation for the ICC's approach to command responsibility.

This could also contribute in reshaping the international criminal jurisprudence on this mode of liability, with consequences for military manuals of armed forces around the world.

INTERNATIONAL CRIMINAL DEFENCE LAWYERS - GERMANY-ANNUAL MEETING

BERLIN-2018

On 27 January 2018, the International Criminal Defence Lawyers – Germany held their 12th annual meeting in Berlin, this year titled *Defence before the International Courts.*

The first speaker was Judge Kai Ambos, a judge of the Kosovo Specialist Chambers (KSC). Judge Ambos presented the background to the creation of the KSC mentioning the Council of Europe Parliamentary Assembly Report which was published in January 2011 and the establishment of the Special Investigative Task Force in September 2011 to investigate crimes committed in Kosovo in 1998-1999. In April 2014 there was an Exchange of Letters between the President of Kosovo and the High Representative for the Union for Foreign Affairs and Security Policy which detailed that any court must include only international staff. Following this there was a Decision of the Constitutional Court of Kosovo providing for the KSC and Specialist Prosecutor's Office within the judiciary of Kosovo in April 2015 and in August 2015 there was an amendment to the Kosovo Constitution and adoption of the
Law on the Specialist Chambers and Specialist Prosecutor's Office
Judge Ambos explained that the KSC is fully operational but no indictments have been issued yet. Judge Ambos emphasized that the Prosecutor is completely independent and it is solely for the Prosecutor to decide who and when to indict.

Judge Ambos explained that the KSC is a new construction for an international court as it is wholly within the framework of the Kosovo judicial system but has a seat in The Hague. The court is funded by the EU and five supporting States (Canada, Norway, Switzerland, Turkey and the USA).

Judge Ambos explained that there had been two recent failed attempts by the Kosovo Parliament to close the KSC and that the US Ambassador to Kosovo had sent a strong warning that there would be consequences for Kosovo if they were to vote to close the court. He also said that there had been little media interest in the KSC until the recent closure of the ICTY and the spotlight seems to have shifted to the KSC.

Judge Ambos stated that the KSC has jurisdiction over war crimes, crimes against humanity and crimes against the administration of justice. Customary international law applies along side Kosovo law.

The KSC would have jurisdiction over crimes committed between 1 January 1998 and 31 December 2000. The territorial jurisdiction would be for any crimes which were 'commenced or committed' on the territory of Kosovo. Judge Ambos highlighted that this could include trans-border crimes which commenced in Kosovo and continued in another territory, such as alleged organ trafficking.

The KSC was established to try crimes committed by or against Kosovo/Yugoslav citizens. As Judge Ambos points, this means that the Prosecutor may indict citizens of other states, including NATO personnel.

The KSC has primacy over Kosovo law and also has primacy over any EU state to conduct a prosecution. He explained that there are four levels of chambers: a Basic Court Chamber, a Court of Appeals Chamber, a Supreme Court Chamber, and a Constitutional Court Chamber.

Judge Ambos stated that there is an EU Public Prosecutor however there is not currently an EU criminal court. Thus the KSC could serve as a test court for a potential future EU criminal court. In conclusion, Judge Ambos recalled that the Directive on Counsel had recently been published and that lawyers could apply to be admitted to the KSC List of Counsel for Defence and/or Victims.

The next speaker was Joe Holmes who gave an overview of the Stanišić and Simatović retrial at the MICT. Holmes recalled that the Stanišić and Simatović Appeals Chamber ordered a retrial because, first, the Trial Chamber failed to provide a reasoned opinion in relation to the common criminal purpose. And second, by the time of the Stanišić and Simatović appeal, the specific direction requirement of the actus reus for aiding and abetting, first accepted in Perišić and relied on by Stanišić and Simatović Trial Chamber, has been rejected and overturned by the Appeals Chamber in Šainović et al. and in Popović et al.

"The ASP seems to be more political than the UN Security Council"

Holmes explained the challenges faced by the defence in relation to the scope of the retrial. Although the judges had held that new evidence and witnesses which were not part of the first trial should be limited, in practice the Prosecution has attempted to extend the case far beyond the first trial by tendering Rule 111 packages with witness statements and a wealth of documentary evidence. The retrial is half-way through the Prosecution case which is expected to continue throughout 2018.

The next to present was Marija Brackovic who spoke about defence investigations at the ECCC. She gave an overview of the creation of the ECCC and a brief historical background on the Khmer Rouge regime. She explained that the ECCC follows the civil law system criminal procedure with some adversarial (common law) modalities. She discussed the defence challenges related to disclosure and investigative requests, considering that at the ECCC investigations are conducted by the Office of C-Investigating Judges and not by the parties.

Prof. Geert Jan Knoops opened the afternoon session with a presentation on the use of forensic and DNA evidence in international courts. He highlighted that it was important that any expert should be able to explain what methodology and techniques they used for their work. He also stated that the chain of custody was imperative for forensic and DNA evidence to show that it had not been contaminated or tampered with.
He used the example of wound ballistics as a particular area of expertise and that a general pathologist would not be a suitable expert for this type of injury. Prof. Knoops explained the different techniques which can be used for analyzing DNA and that it is important that the expert is questioned on this as some techniques are more reliable than others.

Stéphane Bourgon was next to give a presentation about the challenges to the rights of the accused at the ICC. Bourgon explained that the Assembly of States Parties (ASP) seems to be more political than the UN Security Council and compared the two different ways in which the ad hoc tribunals and the ICC were established. Bourgon stated that the recent addition of the crime of aggression at the ICC seemed to be political and questioned whether it would be used in practice. The ASP gave the power to the UN Security Council to decide whether an act of aggression has taken place.

Bourgon mentioned the situation in his current case at the ICC against Bosco Ntaganda. He stated that many of his client's former colleagues were now in government positions and would not testify in the case and how this has a huge impact on Ntaganda's fair trial rights.

Bourgon explained that there was an Article 70 contempt investigation which was ongoing parallel to the main proceedings, most of which were ex parte proceedings. The Prosecution had managed to obtain over 4,000 telephone conversations which Ntaganda had from the Detention Unit. This included conversations between Ntaganda and his defence counsel including details of his defence case. The Defence were only made aware that the Prosecution had access to these conversations after 15 months. When the Defence raised that this was a clear breach of Ntaganda's right to a fair trial, the Trial Chamber ruled that it was not sufficient to stop the proceedings. According to Bourgon, no fair trial is possible when the Prosecution is aware of the defence case even before it commenced.

Bourgon explained that the only way they felt that Ntaganda could reach the judges was for him to testify. Despite the risks related to waiving his right to remain silent, Ntaganda decided to take a stand and testified for 123 hours.

The Counsel at the ICC are marginalised and lack resources, which infringes upon the quality or arms

Chief Charles Taku was the next speaker and gave an overview of some of the issues which Defence and Victims counsel faced at the ICC. He explained that there had been legal aid cuts in 2012 and this had resulted in counsel at the ICC being the lowest paid of all the international criminal courts and tribunals. He explained that counsel at the ICC are marginalized and lack resources, which infringes upon the equality of arms.

Natalie von Wistinghausen gave an overview of the Ayyash et al case at the Special Tribunal for Lebanon (STL). She explained that the case is still in the Prosecution case phase and that the Prosecution's case had been split into three sections: crime scene witnesses, political witnesses, and telecommunication experts. She explained that not having a client presented many difficulties for defence counsel as they cannot receive any instructions and cannot conduct investigations in such a situation. She explained that funding was not an issue at the STL as the annual budget is approximately €60,000,000 with 49% of the budget being provided by the Lebanese government.

The conference concluded with a presentation from Jens Dieckmann on the International Criminal Court Bar Association (ICCBA). He gave an overview of the ICCBA's creation and how it had taken many years to get such a body established largely due to the lack of political will and support from previous Registrars. He explained that the ICCBA had been invited to present a report on its work to the ASP, which illustrates the importance the ICCBA can play at the ICC. He discussed the various elected committees and the services the ICCBA offers its members and the importance of having a unified voice of counsel at the ICC.

THE ROHINGYA CRISIS: NO SIMPLE SOLUTION

BY GORKEM TURER

The plight of the Rohingya from Rakhine State in western Myanmar have been widely reported in the press and by human rights organizations, describing the litany of human rights abuses and crimes: persecution, rape, murder, forcible transfer, deportation, extermination, arbitrary detention and imprisonment, and more. Unfortunately, the international community and those who are expected to take action (in particular, the United Nations) fail to do so, as if waiting for the criminal acts against the Rohingya to dissipate.

Current events show that the Myanmar government and military lack the political and moral will to act responsibly, benefiting from the dissolution among the member states of the United Nations Security Council (UNSC), in continuation of the purported “ethnic cleansing” against the Rohingya. Why this is happening and why the international community fails to adequately address the crisis are the questions worth serious reflection. I do not intend to offer any grand solutions, but to draw attention to the problem and hopefully contribute to the better appreciation of the complex origins of the Rohingya tragedy.

Who are the Rohingya and why are they persecuted? The Rohingya are the stateless people of Myanmar, which make up the largest ethnic minority in the country (1,1 of 52 million). They mostly populate the Northern Rakhine state, located in the west of Myanmar, bordering Bangladesh, where it is claimed the Rohingya originally came from. Tensions between the Muslim Rohingya and Buddhists in Rakhine state have existed for decades and, perhaps, centuries, although for a short period, the Rohingya enjoyed political rights and autonomous statehood following Myanmar’s independence from the British rule back in 1948. Since the adoption of the 1982 Citizenship law, the Rohingya have continuously been subject to heavy-handed government campaigns starting from the military rule to the present day. The 1982 Citizenship law does not recognize the Rohingya as one of the ethnic minorities entitled to citizenship. Being stateless, the Rohingya lack basic human rights and legal protections such as access to education, healthcare, employment, freedom of movement, private property and ownership. Meanwhile, for many Rohingya, Myanmar is the country where they were born and lived for generations. The outburst of anger towards discriminative laws of Myanmar led to the formation of Arakan Rohingya Salvation Army (ARSA), which reportedly receives support from foreign radical Islamists.

"Rohingya refugees hesitate to come back. Their repatriation would be meaningful only if certain conditions are met, such as guaranteed citizenship"

Current situation:
The most recent wave of massive violence in Myanmar started in August 2017 after the ARSA attacked more than 30 police border posts. The Médecins Sans Frontières report that at least 6,700 Rohingya have been killed in one month in contrast to the

government's official death toll of 400. The Myanmar government blocks humanitarian support from international aid agencies and blocks any fieldwork. According to the Myanmar military, their operations target only insurgents. Conversely, human rights groups' and journalists' reports present compelling evidence (based on interviews with the refugees, audio-visual material, photographs, and satellite imagery) that the attacks are coordinated, organized, and that the Rohingya are being systematically killed, persecuted, and driven off their birthplace to the neighbouring country, Bangladesh. In legal terms, these are crimes against humanity.

Troubling repatriation.
In November 2017 Bangladesh and Myanmar have agreed to repatriate more than 600,000 Rohingya refugees who fled amid violence in the northern Rakhine state. Myanmar agreed to accept 1,500 Rohingya each week. January 23rd was set as the commencement of the repatriation process, aiming to repatriate all of the refugees within two years. International human rights groups have raised concerns over the repatriation process. Amnesty International rightly points out that since the Myanmar government denies the crimes against humanity conducted by its armed forces, there is no reason to believe that Myanmar will protect the rights of repatriated Rohingya. Any forcible returns would be a violation of international law. Considering that the cause of the crisis is what appears to be a state's campaign of suppression against the Rohingya, any agreement that fails to ensure human rights and protections will not be a remedy for the region's longstanding violent atmosphere. Similarly, Human Rights Watch warns against moving the refugees to uninhabitable lands or returning them to Myanmar without key citizenship rights. It comes as no surprise that the Rohingya refugees hesitate to come back. Their repatriation would be meaningful only if certain conditions are met, such as guaranteed citizenship, security, and legal protections.

The UNSC response:
The UN, in particular the UNSC has been widely criticized for failing to play a leading role in the resolution of the Rohingya crisis. On 6 November 2017, the UNSC attempted to put some pressure on Myanmar through the presidential statement.

In the statement read out by Sebastiano Cardi of Italy (President of the UNSC for the month of November), the UNSC strongly condemned the widespread violence and called on Myanmar to respect human rights without discrimination and regardless of ethnicity, religion, or citizenship status. The UNSC also demanded full access for and cooperation with UN agencies in the region in addressing investigations into allegations of human rights abuses. Unsurprisingly, the statement has not had much impact.

The Government of Myanmar did not stop its military campaign, perhaps because they know that the government is unlikely to suffer consequences for disregarding the UN calls. The two UNSC permanent members, China and Russia, would block any UNSC resolutions sanctioning concrete actions, such as a humanitarian intervention or creation of an ad hoc tribunal.

China and Russia's use of Veto
It is rather telling that in December last year, Russia and China, along with several other countries, opposed the UN General Assembly's resolution urging Myanmar to end a military campaign against the Rohingya and calling for the appointment of a UN special envoy. Russia and China's frequent use of vetoes concerning humanitarian interventions is a controversial issue, especially when such interventions risk turning into a regime change. Considering the dire human rights situation in these countries, they have no inclination to create a precedent that could easily be turned against their interests. Be that as it may, the fact remains that Myanmar continues to systematically violate the Rohingya human rights as the world sits by.

The agreement on repatriation apparently neglected the Rohingya's inherent right to take part in negotiations. This agreement is far away from offering a resolution of the crisis, considering that the government does not guarantee the safety, security, and protection of refugees' lives, neither it grants the Rohingya citizenship.

Comprehensive social and political reforms at a national level, addressing the full spectrum of civil, political, economic, social, and cultural rights, are necessary to put an end to violence in Myanmar. But in order to achieve a long-lasting peace in the region, the UNSC will have to solve the internal disagreements and act in unity.

News Round-Up

Click on the box to read the full article

ICC to examine claims of crimes against humanity by Duterte, *The Guardian*
The international criminal court is to examine complaints that Rodrigo Duterte, the Philippine president, has committed crimes against humanity in his brutal anti-drugs crusade.
A report submitted to the ICC last year laid out evidence that Duterte had been directly responsible for "extrajudicial executions and mass murder" over three decades since he began his war on drugs as mayor of Davao in 1988...

Afghans seeking justice pin hopes on Hague court investigation, *Reuters*
Thousands of Afghans are hoping for justice from the International Criminal Court (ICC) with Islamist militants, the government and U.S.-led forces all expected to be the subject of investigations, and possibly, trials.ICC prosecutor Fatou Bensouda asked a pre-trial chamber of judges in November for authorization to launch a full investigation into allegations of war crimes and crimes against humanity in Afghanistan...

Former Assad defence minister added to list of war criminals, *Middle East Monitor*
The International Network to Prosecute War Criminals has added the former Syrian Defence Minister Fahd Al-Freej to its list of war criminals, accusing him of cracking down on protesters in the Syrian revolution, AlKhaleejOnline reported yesterday.The network accused Al-Freej of committing "awful war crimes against humanity" during his five years as Defence Minister since he was appointed to the post on 18 July 2012...

European court official says gay spouses have rights in all EU countries, *The Guardian*
The rights of same-sex spouses must be recognised by every member of the EU, even if a country's government has not authorised gay marriage, the European court of justice has been advised. In what has been hailed as a major step forward for equal rights, Melchior Wathelet, a Belgian advocate general in the Luxembourg court, said gay spouses had standing in countries...

Palestinian Authority Mulls Suing Trump in International Criminal Court over Embassy Move, *Jewish Press*
The Palestinian Authority government is considering an appeal to the International Criminal Court (ICC) at the Hague, over the White House's decision to relocate its embassy from Tel Aviv to Jerusalem, PA Ambassador to Russia Abdel Hafiz Nofal told TASS in an exclusive interview Tuesday, ahead of Mahmoud Abbas's trip to Russia's Black Sea resort of Sochi...

Russia: Rights Defender Arbitrarily Arrested in Chechnya, *Amnesty International*
Police in Chechnya have arbitrarily arrested Oyub Titiev, head of the local office of Memorial, Russia's leading human rights organization, on bogus drug possession charges, Human Rights Watch, Amnesty International, Front Line Defenders, FIDH and the World Organisation Against Torture in the framework of the Observatory for the Protection of Human Rights Defenders, the Norwegian Helsinki Committee, and International Partnership for...

Appeal Hearing Focuses on Bemba's Mode of Liability, *International Justice Monitor*
Hearings in the appeal of Jean-Pierre Bemba's case at the International Criminal Court (ICC) have over the last two days dwelt on the interpretation of what constitutes a military commander's responsibility for crimes committed by their subordinates. Equally at the center of hearings was the level of knowledge a commander needs to have about subordinates' crimes in order to bear criminal liability. The hearing, which started on Tuesday, considered..

UN experts decry Saudi Arabia's persistent use of anti-terror laws to persecute peaceful activists, *OHCHR*
Top United Nations human rights experts* have deplored Saudi Arabia's continued use of counter-terrorism and security-related laws against human rights defenders, urging it to end the repression and release all those detained for peacefully exercising their rights. Religious figures, writers, journalists, academics and civic activists are being targeted...

Slobodan Praljak Suicide 'Couldn't be Prevented': Inquiry, *Balkan Transitional Justice*
Without specific intelligence, there were no measures that would have guaranteed detection of the poison that Slobodan Praljak took in court in November after his sentence was announced, said an independent expert review published by the International Criminal Tribunal for the Former Yugoslavia on Sunday. "It is not possible to conclusively state when and how the poison came into...

US: Secret Evidence Erodes Fair Trial Rights, *Human Rights Watch*
Evidence suggests US authorities deliberately conceal the facts about how they found information in a criminal case and may be doing so regularly, Human Rights Watch said in a report released today. Withholding these facts to cover up investigative practices, including potentially illegal ones, harms defendants' rights and impedes justice for human rights violations...

Bosnia Confirms Indictment for Crimes Near Donji Vakuf, *Balkan Transitional Justice*
The Court of Bosnia and Herzegovina on Thursday confirmed the indictment against four former Bosnian Serb fighters, Branko Cigoje, Zeljko Tadic, Sasa Boskic and Milorad Glamocak, for crimes against civilians near the town of Donji Vakuf. The Court said that it confirmed the charges...

Articles and Blogs

BLOG UPDATES AND ONLINE LECTURES

Blog Updates

"A Snowy December night in The Hague", by Alan L. Yatvin. Blog available here.

"The (expected) guilty verdict against Ratko Mladić", by Caroline Fournet. Blog available here.

"Customary International Law and the Addition of New War Crimes to the Statute of the ICC", by Dapo Akande. Blog available here.

Online Lectures and Videos

"International Law in Action: the Arbitration of International Disputes", by Leiden University. Lecture available here.

"Openness in International Law", by Judge Kenneth Keith. Lecture available here.

"What International Courts (and Judges) May and May Not Do", by Judge Rosalyn Higgins. Lecture available here.

PUBLICATIONS AND ARTICLES

Books

Kelly Pitcher. (2017). **Judicial Responses to Pre-Trial Procedural Violations in International Criminal Proceedings**, Asser Press.

Dustin N. Sharp. (2018). **Rethinking Transitional Justice for the Twenty-First Century**, Cambridge University Press.

Thomas W. Smith (2017). **Human Rights and War Through Civilian Eyes,** Philadelphia University Press.

Abu Bakarr Bah. (2017). **International Security and Peace Building**, Indiana University Press.

Articles

Alexander Heinze. (2017). **"The Kosovo Specialist Chambers' Rules of Procedure and Evidence: A Diamond Made Under Pressure?"**, Journal of International Criminal Justice, Volume 15, Issue 5, pp. 985-1009.

Gauthier de Beco. (2017). **"Protecting the Invisible: An Intersectional Approach to International Human Rights Law"**, Human Rights Law Review, Volume 17, Issue 4, pp. 633-663.

Emily Haslam, Rod Edmunds. (2017). **"Whose Number Is it Anyway? Common Legal Representation, Consultations and the 'Statistical Victim'"**, Journal of International Criminal Justice, Volume 15, Issue 5, pp. 931-952.

CALLS FOR PAPERS

European University Institute has issued a call for papers on the topic "Challenges to the EU Law and Governance in the EU Member States".
Deadline: 18 February 2018, for more information click here.

PluriCourts (Faculty of Law, University of Oslo) has launched a call for papers for its coming conference: 'Ensuring and Balancing the Rights of Defendants and Victims at International and Hybrid Criminal Courts'.
The Deadline for abstracts is 19 March 2018, for more information click here.

University of Oslo - Faculty of Law has issued a call for papers on the topic Responding to legitimacy Challenges: Opportunities and Challenges for the European Court of Human Rights.
Deadline: 15 February 2018, for more information click here.

EVENTS AND OPPORTUNITIES

EVENTS

8th Academic International Conference on Interdisciplinary Legal Studies
Date: 5-7 March 2018
Location: University of Oxford, Oxford
For more information, click here.

EU-Russia Relations in an Era of Sanctions
Date: 14 February 2018
Location: Asser Institute, The Hague
For more information, click here.

CPL Seminar: 'Thinking about the Story of R. (Cart) v. Upper Tribunal: Unjustified Abandonment of Conceptual Orthodoxy or Welcome Embracement of Legal Reality?'
Date: 13 February 2018
Location: The Law Faculty at University of Cambridge, Cambridge. For more information, click here.

21st Annual IBA Arbitration Day: the Rule of Law
Date: 25-26 February 2018
Location: Hilton Puerto Madero, Buenos Aires
For more information, click here.

OPPORTUNITIES

Legal Assistant
International Criminal Court, The Hague
Deadline: 13 February 2018
For more information click here.

Head of Legal Advisory Services
International Committee of the Red Cross, Geneva
Deadline: 14 February 2018
For more information, click here.

Human Rights Officer (P-3)
Office of the High Commissioner for Human Rights, Geneva
Deadline: 23 February 2018
For more information, click here.

Legal Adviser
OSCE High Commissioner on National Minorities, The Hague
Deadline: 28 February 2018
For more information, click here.

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