



NEWSLETTER CRIMINOLOGY AND INTERNATIONAL CRIMES

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EDITORIAL

After the closure of the ICTR in December 2016, the ICTY has now too closed its doors. The ruling in the Mladic case was highly anticipated by many people, but it was the dramatic suicide in court by the defendant Praljak after hearing his verdict which probably stands out in people's memory. The ICTY would have deserved a better closure – after the tough start it managed to prosecute and convict a large group of defendants and has produced a lot of important case law – see for analysis of the legacy of the ICTY the contribution of Barbora Hola and Mirza Buljubasic. It is now time for the ICC to take over and continue this legacy. But the ICC is facing hard times as well and it has to be seen to what extent the withdrawal of Burundi will affect the court – as discussed by James Nyawo. Unfortunately there is still much left to do as Joris van Wijk shows in his contribution on Bangladesh and the Rohingya Refugees. National courts should take their responsibility as well. The Dutch district court in The Hague is one of the European courts which takes its task seriously as becomes clear from the contribution of Thijs Bouwknecht. Maartje Weerdesteijn discusses the change of power in Zimbabwe where Robert Mugabe was forced out of the presidency after 37 years.

In the research section, Pieter Nanninga discusses the challenges and benefits of his fascinating research in which he interviews Islamic State supporters online. Adina Nistor writes about the conference on punishing international crimes in

domestic courts and Melanie O'Brien talks us through the bi-annual conference of the International Association of genocide Scholars (IAGS). There is a broad selection of new books, compiled by Suzanne Schot and myself and the recommended book is *All Rise* – by Tjitske Lingsma. Carola Lingaas summarizes her PhD on the concept of race in international criminal law, which she defended at Oslo University recently. There is a slight change in the editorial board as Roelof Haveman has stepped down as editor-in-chief. We wish to thank Roelof for his work as editor-in-chief for the last few years and are glad he stays on as an ordinary board member. Thanks Roelof!

AGENDA

- 4-7 April 2018, International Studies Association (ISA), San Francisco, US, <https://www.isanet.org/Conferences/San-Francisco-2018>
- 12-14 June 2018: Stockholm Criminology Symposium, Stockholm, Sweden. Deadline: 28 February 2018 <http://www.criminologysymposium.com/>
- 4-7 July 2018 INOGS International Conference, Marseille, France. Deadline: 15 March 2018, <https://inogs.com/conferences/>
- 29 August – 1 September 2018, European Society of Criminology (ESC) – annual conference, Sarajevo, Bosnia and Herzegovina. <https://www.esc-eurocrim.org/index.php/conferences/upcoming-conferences>
- July 2019: IAGS Conference, Phnom Penh, Cambodia, <http://www.genocidescholars.org/iags-conferences>

If you organize a conference, workshop or symposium related to international crimes, please inform us a.l.smeulers@rug.nl and we will make a reference on our website and in the newsletter.

THE HAGUE NEWS

Alternative Legacies? 'Images and Imageries' of the International Criminal Tribunal for the former Yugoslavia in Bosnia and Herzegovina

By Barbora Hola and Mirza Buljubasic

On 21 December 2017 the International Criminal Tribunal for the Former Yugoslavia (ICTY) held its final closing ceremony in the beautiful and historic Hall of Knights in the Peace Palace in The Hague. The high-level event was attended by many officials, diplomatic corps and UN high representatives, including the UN Secretary General (SG) and the Dutch Royal Family. During the closing, the ICTY was celebrated as "a ground breaking moment", not only dispensing accountability to those responsible but also contributing to "the healing process" of victims, documenting "undeniable truth and facts of past tragedies" and leaving records, which will "ensure that the world will not forget, that history cannot be re-written [and] victims' voices will continue to resound down the decades."¹ The final festivities constituted the peak in a series of "the legacy events" organized by the ICTY, and on its behalf, during 2017 to celebrate and emphasise, over and over again, achievements of this pioneering international criminal justice institution. Indeed, in 2017 one can confidently state that the ICTY has proven wrong many sceptics, who back in 1993 after its establishment considered the then struggling institution to soon fade away and be forgotten. Over the course of 24 years, the ICTY indicted 161 individuals for their involvement in genocide, crimes against humanity and war crimes committed during the wars of Yugoslav secession. Ninety were convicted and nineteen acquitted. It held over 10.500 trial days and heard over 4600 witnesses. It collected a significant amount of archival material. It sparked and assisted in war crimes prosecutions before domestic courts in the successor countries of the Former Yugoslavia. It indisputably contributed to the revival and consolidation of international criminal law and its doctrine. It also inspired a significant amount of interest in this field of law and contributed to the development of "the international criminal justice industry" with many NGOs, IGOs, lawyers and academics now fervently "fighting impunity" for

¹ The UN Secretary-General's remarks at Closing Ceremony for the International Criminal Tribunal for the Former Yugoslavia [as delivered], 21 December 2017, available here: <https://www.un.org/sg/en/content/sg/statement/2017-12-21/secretary-generals-remarks-closing-ceremony-international-criminal>.

those responsible of mass atrocity crimes committed around the globe.

In the international diplomatic and political circles the ICTY is hailed for all these achievements and largely considered a success. Its legacies are, however, much more mixed and controversial when we zoom in on those 'spaces and places', where actual crimes were actually committed. There, where people were most affected by the crimes, be it victims, perpetrators, bystanders or those in between these categories, have been trying to come to terms with the violent past. In Bosnia, Croatia, Serbia and Kosovo, the images and imageries of the Tribunal are different from the international halo. The Tribunal's image as a success story is contested, politicized and largely divided along ethnic lines. For those closely following the ICTY developments this is certainly not surprising. Think only of the widely reported reactions to the final 'drama' of the last ICTY judgment delivered in November 2017, less than one month before the December closing ceremony. During the reading of the verdict, one of the defendants, Croatian General Praljak, theatrically drank a cyanide poison in the courtroom in contestation of his conviction and the label of war criminal. The reactions shared on social media were swift, critical and largely divided along ethnic lines. The Croatian Prime Minister Andrej Plenkovic used Praljak's suicide as confirming the "deep moral injustice" of the whole verdict, which, according to him, stands against "the historical truth", while many Bosniak victims' representatives welcomed the verdict as "just" and "an end to a dark part of history."²

In this short exposé, we touch upon the ways in which media and political elites in Bosnia and Herzegovina³ have been 'colouring' the images of the ICTY in Bosnia (and beyond) and how these evolved over time. The media reporting seems to have evolved from the initial indifference towards the ICTY and scepticism towards its judicial capabilities, largely shared among all ethnic groups, to its increased relevance in public space. This relevance, however, was expressed by an increasing criticism of the Tribunal's activities, largely divided along ethnic lines, and seemingly 'schizophrenic' portrayals of the ICTY fluctuating over time, on an *ad-hoc* basis. The portrayals were framed around a 'us versus them' logic depending on 'whose' defendant was at the moment being convicted and/or acquitted, and for what.

² See Balkan Insight reporting available here <http://www.balkaninsight.com/en/article/croatia-rejects-party-of-bosnian-croats-verdict-11-29-2017>

³ Some of the media reporting referred to in this contribution also stems from Croatia and Serbia.

After its establishment in May 1993, when the war was still on-going and atrocities were being regularly committed, the ICTY Prosecutor's Office did not immediately have access to crime scenes in Bosnia. All sides to the conflict, Bosniaks, Serbs and Croats, were mainly indifferent to the new institution, primarily due to its initial struggles to establish itself and a lack of judicial action. In fact, the international community was perceived as a clear interference in internal affairs of (newly established) the Republics. Especially Bosniaks watched the first years of the ICTY with distrust, which was due to the arms embargo imposed by the international community.⁴ Serbs seemed to have also been largely unconcerned, though alert, to the new Tribunal.⁵ In 1995, Radovan Karadžić, the Bosnian Serb political leader during the war, famously stated "The Hague does not concern us [Serbs]!"⁶ After the Bosnian Serb Duško Tadić was arrested in Germany in 1994 and extradited to the ICTY in 1995, and after indictments were officially announced against 21 Serbs, the image of the ICTY in Bosnia and Herzegovina slowly began to shape.⁷ Following the Srebrenica genocide in July 1995, which was committed in the presence of Dutch UN peacekeepers, perceptions of the entire international community in Bosnia, and especially among the Bosniaks, was further shaken.⁸ Concerns were expressed whether the ICTY, as yet another representative of the international community, was actually up to the task of delivering justice at all, and if so, for whom.⁹ During the war period the ICTY largely focused on building up its credibility at the international level and obtaining cooperation of states, while being obstructed and largely dismissed by powerful individuals in the region. The image of the ICTY painted from 1993 until the mid-1996, which was relatively uniform across the

⁴ Oslobođenje, Genocidna banda na djelu, 24 December 1994 available here:

<http://www.infobiro.ba/article/668437>.

⁵ Oslobođenje, Dometi optužnice, 26 July 1995 available here:

<http://www.infobiro.ba/article/440796>.

⁶ Ibid.

⁷ Oslobođenje, Pravda sustiže zločinca, 14 February 1995, available here:

<http://www.infobiro.ba/article/510464>.

⁸ Oslobođenje, Posljednja opomena, 13 July 1995 available here:

<http://www.infobiro.ba/article/449933>;

[Oslobođenje, Međunarodna zajednica odobrila genocide, 28 July 1995.](http://www.infobiro.ba/article/449933)

⁹ Oslobođenje, Politički spletkaroši, 16 July 1995, available here:

<http://www.infobiro.ba/article/446882>;

Oslobođenje, Sakupljači podataka, 21 October 1994 available here:

<http://www.infobiro.ba/article/688952>.

ethnic groups, can be described as a strong scepticism towards the institution and questioning of its possibilities to function effectively.

In 1996, Dražen Erdemović, a Bosnian Croat and a member of 10th sabotage detachment of the Army of Republic of Srpska, came forward and pleaded guilty for his involvement in killings during the Srebrenica massacre. He was the first suspect to surrender and his guilty verdict was the first issued by the ICTY. Erdemović' willingness to testify and cooperate with the Tribunal (also beyond his own case) clearly marked a turn in the development of the Tribunal's activities. The judicial impasse was broken. In the following two years, the ICTY apprehended and tried low level individuals from all sides to the conflict: Bosnian (e.g. Mucić et al.), Croatian (e.g. Anto Furundžija), and Serbian (e.g. Duško Tadić). The media and public reacted relatively positively to these first trials¹⁰ as representatives of all parties to the conflict were facing justice and the veil of impunity regarding hands-on perpetrators was slowly being pierced. During 1997, however, opinions and fears were being expressed that prosecution of high-ranking individuals and those in positions of power would slow down the implementation of the Dayton Peace Accords.¹¹ The public and media seemed afraid that justice, in case it reaches beyond the small fish and extends to the conflict entrepreneurs and higher ranking individuals, would obstruct the peace efforts. At the end of the 1990s this relatively positive image of the ICTY was not disturbed. Even

¹⁰ Feral Tribune, Uznička Republika, 24 August 1998 available here:

<http://www.infobiro.ba/article/602553>; Feral Tribune, Rodna gruda, 3 March 2001; Onasa, Haški tribunal: D. Tadić nije kriv za ubistva, 7 May 1997 available here:

<http://www.infobiro.ba/article/174440>. Onasa, Haški tribunal: Oslobođen Z. Delalić, osuđeni Z. Mucić, H. Delić i E. Landžo available here:

<http://www.infobiro.ba/article/209194>; Onasa, M. Hajrić pozdravio presudu Haškog tribunala u slučaju Čelebići, 16 November 1998 available here:

<http://www.infobiro.ba/article/209180>; Onasa, Ministri srpskog entiteta u BiH najavili posjetu Haškom tribunalu, 25 July 1996, available here:

<http://www.infobiro.ba/article/161444>; Onasa, IFOR: H. Delić i E. Landžo danas transportovani u Hag, 13 June 1996, available here:

<http://www.infobiro.ba/article/160072>; Onasa, H. Solana pozdravio saradnju vlasti RS u "akciji Žigic", 17 April 1998, available here:

<http://www.infobiro.ba/article/200128>.

¹¹ Onasa, Predaja desetorice Hrvata Haškom sudu usporiće Dejtonski sporazum, 7 October 1997, available here:

<http://www.infobiro.ba/article/181103>.

after the Tribunal was actually starting to reach to the more higher-ups and arrested a couple of more powerful individuals such as Croatian General Tihomir Blaškić in 1996, Serbian General Radislav Krstić in 1998, or Bosnian Enver Hadžihasanović in 2001.¹²

However, these arrests and trials also marked the beginnings of ethnically divided discourses regarding the ICTY. Although a relatively uniform perception of the ICTY existed by the end of the 20th century, indictments and trials of more and more powerful individuals split the image of the ICTY among ethnic groups. These different portrayals were dynamic, in a way schizophrenic, as they largely fluctuated on an *ad-hoc*, case by case basis, and were becoming increasingly more critical. Every ethnic group seemed to have supported the ICTY only if member(s) from other ethnic group was/were on trial.¹³ Politicians, divided across the ethnic lines, were on and off praising and/or criticising the court's dependence on which group's representative was at the moment sitting in the dock facing judges in The Hague. The image of the ICTY thus became largely pluralistic and divided.¹⁴ Every individual, ethnic and regional group(s) had a different judgment about the court.

In 2005 Bosnian General Sefer Halilović was acquitted and Bosniaks saw it as victory.¹⁵ The sense of victory was further reinforced in 2008 when the ICTY Appeals Chamber reversed the conviction of Naser Orić and acquitted him. In contrast, when in 2008 Bosnian General Rasim

Delić was convicted for war crimes, Bosniaks fiercely criticized the judgment as "equalizing the (roles of) aggressor and defender."¹⁶ That same public perception of injustice, whenever a Bosniak faced a conviction,¹⁷ has remained to date.

Although unsatisfied with the outcome of the Halilović case, Croats did not deny the crimes committed during the war in Bosnia.¹⁸ They, however, criticized the ICTY for prosecuting high-ranking Croats. The crimes were according to Croat politicians committed by rogue soldiers and other low-level individuals without any preconceived plan or policy.¹⁹ Any reference to high level planning, ordering or joint criminal enterprise involving the State, political or military authorities from the Croatian side was largely disputed and dismissed. This culminated after general Tihomir Blaškić was convicted for committing, planning, ordering and failing to prevent crimes committed in Lašva valley and sentenced to 45 years imprisonment in 2000. His convictions were largely reversed on appeal, using evidence newly disclosed by the Croatian state, and his sentence reduced to 9 years imprisonment. Relatedly, Croatian authorities fiercely opposed to the classification of Bosnian war as international armed conflict (established by the ICTY in the Blaškić case, but also in Naletilić and Martinović), as that implied participation of the

¹² Nezavisne novine, Odgovorni za ratni zločin u Ahmićima moraju pred sud, 5 August 2004 available here:

<http://www.infobiro.ba/article/24444>; Dani, Gospodin Krajišnik je proglašen manje-više krivim, 29 September 2006, available here: <http://www.infobiro.ba/article/272710>; Nezavisne novine, Nastavak suđenja oficirima bivše Armije RBiH, 10 January 2005, available here: <http://www.infobiro.ba/article/17026>.

¹³ Onasa, M. Kovačević juče doživio moždani udar, 18 July 1997, available here: <http://www.infobiro.ba/article/177312>; Onasa, J. Divjak: Armija BiH nije organizovala genocide, available here:

<http://www.infobiro.ba/article/181412>; Feral tribune, Zborni mjesto Scheveningen, 10 November 2001 available here: <http://www.infobiro.ba/article/181412>.

¹⁴ Nezavisne novine, Preispitani saradnju sa Hagom, 19 October 2007.

¹⁵ Slobodna Bosna, Spektakularna proslava oslobađanja Sefera Halilovića trajala do zore, 24 November 2005, available here: <http://www.infobiro.ba/article/191165>.

¹⁶ <http://www.infobiro.ba/article/26499>.

¹⁷ According to Mirko Klarin, Serbs comprised 68% of ICTY indictees, with 21% being Croat, 4% Bosniak, 4% Albanians, 1% Macedonian and 2% unknown. See Mirko Klarin, 'The Impact of the ICTY trials on public opinion in the former Yugoslavia', 7(1) *Journal of International Criminal Justice* 89-96, at p. 92 (2009).

¹⁸ Nezavisne novine, Osudili presudu Haliloviću, 19 October 2007, available here: <http://www.infobiro.ba/article/382241>.

¹⁹ Telegram.hr, Koliko sam ga poznao, Praljak nije bio ratni zločinac, ali hrvatska strana u Bosni jest činila teške zločine, 30 November 2017, available here: <http://www.telegram.hr/price/koliko-sam-ga-poznao-praljak-nije-bio-ratni-zlocinac-ali-hrvatska-strana-u-bosni-jest-cinila-teske-zlocine/>; Vecernji.hr, 'Beograd nije podržavao zločine u BiH, Zagreb jest', 1 December 2017, available here: <https://www.vecernji.hr/vijesti/franjo-tudjman-slobodan-praljak-jadranko-prlic-bih-haaski-sud-1211235>; Faktor, Grabar-Kitarović: Neki naši sunarodnjaci su činili zločine, ali Hrvatska nije bila agresor, i dalje ćemo biti prijatelj BiH, 30 November 2017, available here: <https://www.faktor.ba/vijest/grabar-kitarovic-neki-nasi-sunarodnjaci-su-cinili-zlocine-ali-hrvatska-nije-bila-agresor-i-dalje-cemo-bit-prijatelj-bih-274635>.

Croatian state in the war.²⁰ Whenever this issue came to the fore, the ICTY was labelled as an unjust and political institution.²¹ The acquittals of Croatian generals Ante Gotovina and Mladen Markač in 2012 led to large scale celebrations. They were largely conceived as the sign of collective vindication of the Croatian State and removal of collective stigma of Croatian people.²² However, these imageries now stand in stark contrast to what followed. In the final judgment against Croatian military officials in Prlić et al. in November 2017, when the final verdict was largely overshadowed by Praljak's suicide, the ICTY confirmed convictions of all defendants for their participation in a joint criminal enterprise confirming the link between the then Croatian government to crimes on the ground. Following this misrepresentation of "facts and historical truth" by the ICTY, the court was dismissed by Croat representatives as a political institution that established unjust practice towards them.²³

As of 2001, the trial judgment against Serbian general Radislav Krstić for genocide in Srebrenica started shaping (a negative) image of the ICTY among (Bosnian) Serbs. As a majority of Bosniaks was acquitted or convicted to relatively lenient sentences by the ICTY, and only a small number of Croats was convicted (relative to Serbs), the Tribunal was portrayed by the Serbian media and politicians as a biased court that "was designed to try only Serbs."²⁴ "[T]here is no human being that

we [Serbs] can convince that the Hague Tribunal is not a political but a legal court."²⁵ When Momčilo Krajišnik was convicted in 2006, Milorad Dodik (a former prime minister and current president of the Republika of Srpska) stated: "It is embarrassing that Naser Orić received a ridiculously low, almost acquittal verdict, while Krajišnik received 27 years in prison, which shows that the criteria of the ICTY are not identical to all."²⁶ Indeed, in 2007 only 7% of Serbian citizens thought that the ICTY was unbiased.²⁷ This image of the Tribunal was further reinforced after the above mentioned acquittals of high-ranking Croatian generals Gotovina and Markač. In reaction, the Serb representatives firmly stated that the ICTY "lost all credibility".²⁸ In 2013 after the ICTY Appeals Chamber acquitted General Momčilo Perišić for crimes that occurred in Bosnia and Croatia, there were ad-hoc reports of some restored "faith in the tribunal's neutrality" among Serbs.²⁹ For large part, however, the ICTY image among the Serbs remained bleak. In Serbian imagination, the ICTY was generally anti-Serb and a political court. This imagery of "Serbian victimhood" was further reinforced after the convictions of Radovan Karadžić in 2016 and that of Ratko Mladić in 2017, and was not shaken by, yet another controversial, acquittal of Vojislav Šešelj in 2016. The reaction to Šešelj's acquittal among Serbs was largely framed around his own personal legal capabilities and skills in "defeating" the Tribunal and being able to remove any guilt from his shoulders.³⁰ For Serbs the ICTY remained an unjust and political court and those convicted were largely considered martyrs and heroes.

²⁰ Feral Tribune, Grobna gruda, 3 March 2001, available here:

<http://www.infobiro.ba/article/606804>; Slobodna Bosna, Sud u Haagu po prvi put uvažio Tuđmanove transkripte, 3 April 2003, available here:

<http://www.infobiro.ba/article/281086>.

²¹ Nezavisne novine, Sud u Hagu politički, 2 December 2005, available here: <http://www.infobiro.ba/article/137993>.

²² Balkaninsight, Hrvatska se nada odbacivanju navoda o učešću u ratu u BiH, 17 March 2017, available here:

<http://www.balkaninsight.com/rs/article/hrvatska-se-nada-odbacivanju-navoda-o-u%C4%8De%C5%A1%C4%87u-u-ratu-u-bih-03-17-2017>; Vesti.rs, Reagovanja na presudu Gotovini i Markaču, available here:

<https://www.vesti.rs/Hag/Reagovanja-na-presudu-Gotovini-i-Markacu-4.html>, 16 November 2012.

²³ Balkaninsight, Croatia rejects party of Bosnian-Croats verdict, 29 November 2017, available here: <http://www.balkaninsight.com/en/article/croatia-rejects-party-of-bosnian-croats-verdict-11-29-2017>.

²⁴ Dnevni avaz, Haški tribunal nazvali političkim sudom, 17 December 2008, available here: <http://www.infobiro.ba/article/522697>; Nezavisne novine, Haški sud kao nagrada, 27 November 2007,

available here:

<http://www.infobiro.ba/article/393382>.

²⁵ This argument is supported by the alleged public opinion polls where allegedly 76 percent of Serbs argued that ICTY is a political court. Oslobođenje, Građani Srbije ne vjeruju Haškom tribunalu, 6 July 2007, available here:

<http://www.infobiro.ba/article/471304>.

²⁶ Nezavisne novine, Oprečne reakcije u RS i FBiH, 27 September 2006, available here:

<http://www.nezavisne.com/novosti/bih/Oprečne-reakcije-u-RS-i-FBiH/499>.

²⁷ See Klarin, supra note 17.

²⁸ See Vesti. Vesti.rs, supra note 22.

²⁹ BBC, Momčilo Perišić, Yugoslav army chief conviction overturned, 28 February 2013 available here: <http://www.bbc.com/news/world-europe-21621242>.

³⁰ Nezavisne novine, Dnevnik srpskih izbora, 8 April 2016, available here:

<http://www.infobiro.ba/article/935194>; Dnevni avaz, Glasnogovornik zločina, 2 April 2016, available here: <http://www.infobiro.ba/article/933076>.

Also representatives of the other two ethnic groups did not seem to uncritically celebrate the guilty verdicts against the leaders of their wartime enemies as undisputed victories. The discourse of Bosniak and Croat victim representatives over time became much more nuanced, multifaceted and also more and more critical. It was not enough that the enemy war-time power holders were convicted and sent to prison. The legal narrative and framing of the crimes constructed in the ICTY judgments were contested and criticized as misrepresenting the character of crimes committed during the war in Bosnia. Bosniaks (and in some way Croats) saw these judgments only as a partial justice, because only one temporal (1995) and spatial element (area of Srebrenica) of atrocities was labelled as genocide. All the other practices of ethnic cleansing and crimes committed in Bosnian municipalities were considered 'merely' crimes against humanity and war crimes. In addition, Šešeljs' acquittal was seen as a mockery of justice by victims in both Bosnia and Croatia.³¹ The ICTY in the eyes of the Bosniaks was not consistent in its practices.³² The ICTY practices of early release of those convicted caused additional outrage as, it was reported in the media, "there is no justice, criminals are on the loose" and for that Theodor Meron and the ICTY was considered responsible.³³

Representatives of all three ethnic sides involved in the 1990's conflict agree that the ICTY was a ride on a roller coaster. They also agree that the Tribunal did not contribute to societal, inter-ethnic reconciliation.³⁴ The Tribunal indisputably has had a significant impact beyond the legal realm, be it on a political and societal level. As very briefly discussed above, the Court's judgments were over time increasingly more often than not followed by politics of contestation and the ICTY served as an elixir to nationalist politicians. The image(s) and imageries of the ICTY were designed and shaped on the basis of (ethno)nationalistic and other ideological interests of politicians and media. What these images and imageries say about the ICTY's (alternative?) legacies beyond its courtroom, beyond the legal realm and beyond the international sphere, remains to be determined.

³¹ Dnevni avaz., Obrukao Hag, 1 April 2016, available here:

<http://www.infobiro.ba/article/933063>.

³² Ibid..

³³ Dnevni avaz, Krik žrtava: za nas nema pravde, 13 November 2014, available here:

<http://www.infobiro.ba/article/903786>.

³⁴ Nezavisne novine, Haška (ne)Pravda, 4 April 2016, available here:

<http://www.infobiro.ba/article/935159>.

SHORT ARTICLES

Ethiopian “Red Terror” trial in The Hague – the case of Eshetu Alemu

By: Thijs Bouwknegt

At the time The Hague's "international justice bubble" was rejoicing the grandeur of the UNICTY's "legacy", the city's District Court rendered its latest war crimes verdict on 15 December 2017. A second of its kind in 2017 (Kouwenhoven re. Liberia and Guinea), it virtually went unobserved. Absent from the courtroom during sentencing at the Court was the main character, the accused, now convict: Eshetu Alemu. It was in protest against his expected life sentence for mass atrocities in Ethiopia, 39 years ago. The 10-day trial before the 'International Crimes Chamber' was one of the most intense, unique and historical trials I attended in the past 15 years. After 39 years, eight victims shared their grievances before foreign judges. In time and space, the crime scene was distant. In the dock sat a conversational, intelligent but unsettled perpetrator.

As the UNICTY had only just issued its first arrest warrant, no less than 44 men appeared in a courtroom in Addis Ababa. At the "African Nuremberg", on 13 December 1994, the members of the former ultra-communist regime (the Derg) heard genocide charges relating to the mass persecution and murder of political opponents in the late 1970s. One of the defendants was Melaku Tefera, the "butcher" of Gondar. His reign was murderous, his campaigns against "contra-revolutionaries" tormenting. In 1977, the 23-year old Alemu was Tefera's assistant, acquiring the tricks of the trade, delivering "revolutionary measures." In the next year, Alemu took office in the nationalised palace of Debre Marcos, from where he governed his own province, Gojam. Like Tefara, Alemu was charged by the Special Prosecutor's Office (SPO) for similar atrocity crimes and in the same mega trial (73 defendants in total) in the 1990's. However, by then he was already in the Netherlands, as a refugee, working as a nursing intern in a hospital in Amsterdam. Like many Ethiopians from the feared military junta, including its leader Mengistu Haile Mariam, Alemu was tried in absentia.

In 1998, when Alemu had obtained Dutch citizenship, his SPO case was heard back home. Dozens of documents from the Derg's scrupulously documented security offices were tendered, witnesses put Alemu at the scene of ghastly mass executions. These details came to the attention of the Dutch only briefly, in a report published in a Dutch weekly, in which copies of Ethiopian death

lists were published; all annotated, signed and stamped by Alemu. An Ethiopian witness recognised a name on the list of a man who had a nail hammered through his hand, from which he then was to drink his own blood. Yet, in the absence of an extradition treaty with Ethiopia and a specialised war crimes unit in the Netherlands to probe international crimes in far-off place, the information was shelved. Alemu lingered in impunity and lived in a flat building in Amstelveen while Ethiopian courts convicted him twice. In 2000 he received the death penalty for murdering 197 people and in 2003 he was convicted for genocide, for which he received "rigorous imprisonment for life."

Only in 2009, a year after the conclusion of Ethiopia's mega-trial, which also convicted Mengistu, would a new, large and ambitious International Crimes Unit reopen the cold case of Alemu in the Netherlands. In 2013, police investigators retrieved some 214 pages of copies from Alemu's SPO file (including witness statements) in Ethiopia. But it was the only evidence obtained on the ground. Unhappy with the Dutch refusal to extradite the *génocidaire*, Ethiopia ceased cooperation in 2015. Isolated from the crime scene, the criminal examination shifted to the USA, Canada and the Netherlands, where 28 witnesses were questioned, including Alemu's ex-wife, children and old friends. An undercover agent spoke to Alemu, while his phone was wire-tapped. However, foundational evidence came from victims' testimonies gathered in north America. On that basis, Alemu was arrested at his home on 29 September 2015 and an investigative judge heard the testimony of 18 witnesses, now including an historian, handwriting expert and former SPO Prosecutor. Slated to commence in 2016, the trial was delayed for a year after Alemu changed his defence team.

From 30 October 2017 onwards, the 10-day trial was a summoning of and *rendez-vous* with the past. But historical scores are hard to settle. Not all victims are ready to face the authors of their suffering. In the corridors of The Hague District Court building, an Ethiopian lady was writing a message in a small bible. "I want to give it to him," she says. "I feel pity for the man, [...] He needs forgiveness and I am ready to give it to him, through God." A man next to her, sees it differently. "My justice is in there." He points at the big brown door of the courtroom number E1, where he had attended all hearings. "You do not know what I have seen," he tells the lady, who softly replies: "My hands and legs were tied together and I was pulled up to hang from the ceiling of a prison cell. I was 13 years old."

The lady was not the only school student who fell victim to a pattern of persecution, torture and abuse during the "Red Terror." Gruesome stories like these filled the courtroom, time and again. Their alleged protagonist, an aged man of flesh and blood, wearing a padded jacket, jeans and Nike trainers, was sitting in dock. In the soberly decorated courtroom, sitting under a prominent portrait of King Willem Alexander, the Chamber discussed his dossier. "Good morning, Mr. Alemu." "Good afternoon Mr. Alemu." Dressed in a black toga with a white bib, the Court's President, Judge Mariette Renckens, greets him. Every time he is brought into court through a side door - sturdy, tenacious and flanked by two police officers - Alemu nods at the bench, strides to his black stacking chair and participates vigorously in his trial. From the start he had settled with the outcome of the proceedings. "I accept your judgement, I accept it."

Indeed, by virtue of his position, as a superior, he was responsible by default. Besides, the allegations were too prodigious to deny. One of the largest Dutch criminal trials ever, Alemu faced a catalogue of atrocities, chaptered in four war crimes charges under a 1952 law. What transpires from the case is that Alemu had no taste for due process and international human rights, concepts of which he had "no knowledge" in 1978. A former army nurse and private, he became a disciple of the charismatic Mengistu. Alemu too was all about the revolution as he had grown up poor in "miserable" Addis Ababa. A vocal student, he made his way up in the Derg, even travelling to Moscow and Havana. Alemu, who had a natural talent for public speaking, became an important conveyer of Marxism in Gojjam. Driven around by a personal chauffeur and escorted by bodyguards, Alemu would educate locals at public gatherings, something he says he was "good at" and "proud of."

At the trial, victims memorised Alemu as a young viceroy, a man with power, a superior to *kadres*, *kebeles* and policemen. However, according to witnesses, Alemu's speeches were not at all about propaganda or indoctrination. No, they claim they must have been "exposure meetings", mass-meetings where people were forced to confess they were anti-Derg, reactionaries, counter-revolutionaries and were sent to prison, where often they were killed by the *kebele*-militia. After at least one such meeting in late February 1978, Alemu sanctioned his men to round up 321 people, mostly students, sometimes as young as twelve years old. None of them received an indictment or a trial. All were sent to what witnesses described as a "prison camp" at the Debre Marcos' police bureau, which was under Alemu's helm.

One jail is featured specifically in the trial: Demmelash. The facility was located right at the foot of the hill where Alemu's Palace office was. "We were kept at his feet, literally," a past captive attested during the trial. In the unsanitary "dark rooms" at Demmelash, the detainees received no medical attention, were served unpalatable food and dirty drinking water. At some point, the juvenile captives were shackled together at night. When one would move, all woke up. There were countless restless nights. On one day, a forced labourer had an 'x' carved on his back with the bayonet on a Kalashnikov. Maltreatment and torture were the rule rather than the exception in Demmelash. In the months to pass, according to the judgement, at least six prisoners faced these type of "revolutionary measures", including YT (anonymised), a student. During trial, he testified that he was relentlessly molested by guards and special interrogators, people who were to report to Alemu. YT and other witnesses testified that there was kicking, whipping with a 'giraffe' (a kind of whip) or even spoons. Prisoners were hit on their faces, private parts, soles of their naked feet. The torture has left YT's "left ear ringing." Next to this degrading, inhumane and deadly maltreatment, at least 75 prisoners were strangled to death on 14 August 1978, on the orders of Alemu. The crime scene was a church building at Demmelash. After the massacre, executed by those under Alemu's superior responsibility, at least 240 identified prisoners were continued to be detained and mishandled, until at least 31 December 1981.

The outcome of the trial – a war crimes conviction for arbitrary detention in cruel and degrading circumstances, torture and killing, which resulted in a sentence of life imprisonment and reparations awarded to five victims – was no surprise. But it was particularly the trial as such, that was unique, intense and intimate. Different from the distant, symbolic and elite justice rendered at the international tribunals and courts, these proceedings were tangible, at least to those present, through interpretation when necessary. For most days, the single space of one small courtroom was packed, in silence. At the bench, including the registry, sat seven women and one man (an alternate judge). Three trial judges, two prosecutors, Alemu and his two defence lawyers were the main protagonists. Two lawyers represented the victims, some of whom flew over from north America. They sat closely, listening attentively, holding on to the printouts of their statements, just 2 metres away from their former tormentor. On one day, they were given the floor, to narrate their ordeals, to show their pain and to await Alemu's response from the dock. The atmosphere was mostly tense. One victim walked out of court in tears as Alemu were

shifting his personal responsibility to the Derg, as a regime and organisation.

Also unique was the fact that defendant spoke elaborately, answering a barrage of questions from the bench. "I am not here to defend the Derg, Derg-members, or the Derg leader, I am here to defend myself." In the history of international(ised) justice, where lawyers usually do the talking for defendants, that is an absolute rarity. Only a handful of trials – such as Adolf Eichmann, Slobodan Milosevic, Duch and Charles Taylor – provided a space for the accused to place their perspectives, insights, even emotions, at the heart of the trial. If trials could serve as a lens into the minds of perpetrators, Alemu's case must become a resource for students in this field. For in the dock sat a struggling man, 63 years old, obviously presenting to the bench a counter-narrative, a human face, to the prosecution's depiction of him as a monster. While doing just that, one observes a troubled man, Chameleon-like, adjusting to his various audiences. First and foremost, he had to make sure that in their intimate convictions, the judges would find him not guilty, while also not offending the victims in the courtroom. At the same time, he needed to rationalise, formulate and narrate his past acts and omissions to himself.

Through the trial, in a live setting, Alemu was balancing out all the factors. In his own words, he used his "last breaths" to do that. At times he was repentant, asking the victims for forgiveness. All atrocities troubled him, shocked him. His time had come to face them once more. Simultaneously, we saw a defiant man. He "did not do it" himself nor did he know abuses were going on under his watch: "I would have stopped it," he said, "punished the perpetrators." In fact, he was never in Demmelash, he argued. In one of his versions, witnesses confuse him with another man; an infamous special interrogator from Addis Ababa, Eshetu Andergie. "You have the wrong man in front of you," he told the chamber. "It wasn't me!" At times, Alemu got agitated: "I already told you a 100 times." Disturbed by his past, Alemu showed several faces. He felt sorry for those who had suffered. But he also believed that the Marxist ideology had good intentions. On the other hand, Alemu came to accept that the ideology caused more suffering than prosperity to his beloved country. For that he feels guilty. But then he turned again: "If I was guilty of the atrocities myself I could not live with myself, I would be an animal." His only explanation is that he was guilty by the "virtue of [his] membership of the Derg and that now, after 39 years, in the dock and in the media became the "Black sheep of all that had happened."

Meanwhile, Alemu has appealed the verdict and sentence, which means the case will see additional investigations and proceed to a second trial round, now at The Hague Appeals Court. To be continued here in this newsletter.

Burundi bids agues to the Rome Statute Justice System – What’s next for criminal accountability in Burundi?

By: James Nyawo

There is a popular, African Proverb that says, ‘if you think you are too small to make a difference, you haven’t spent the night with a mosquito.’ Could it be that the decision by the Government of Burundi to leave the Rome Statute Justice system is a testimony that small as Burundi is, it is ready to spearhead an *en masse* withdrawal of African State Parties from the International Criminal Court? Until now the carols for withdrawal of African States Parties have not been seriously acted upon. As such it is too early to see whether Burundi’s withdrawal will have any infectious effect on other African States Parties.

Burundi’s initial cohorts in withdrawing from the Rome Statute; South Africa and Gambia changed their course of action prior to the lapsing of the one-year period after submitting their written notifications. In South Africa, where, the rule of law and separation of powers are still resilient, the Supreme Court held that the Executive arm of Government’s decision to withdraw from the Rome Statute had violated the South African Constitution. In Gambia, the regime change that saw President Adama Barrow taking over power at the beginning of 2017 tilted the fortunes in favour of Gambia remaining a State Party to the Rome Statute. One of the new President’s first official acts was to reverse the decision made by his predecessor for Gambia to withdraw from the Rome Statute.

Other African State Parties that had made pronouncements about withdrawing from the Rome Statute, yet were short of taking concrete steps include Kenya, Namibia and Zambia. In 2017, the African Union Assembly meeting in Addis Ababa, Ethiopia, adopted a decision on the International Criminal Court, which included its acceptance of the ‘ICC Withdrawal Strategy and a call for the African Member States to consider implementing the strategy’s recommendations.’ A total of sixteen African States registered their reservations on the decision. The States are; Benin, Botswana, Burkina Faso, Cabo Verde, Côte d’Ivoire, The Gambia, Lesotho, Liberia, Madagascar, Malawi, Mozambique, Nigeria, Senegal, Tanzania, Tunisia and Zambia. This was the first time that an African Union decision on the ICC had received such

number of reservations.

As it is, the suggestion could be that the International Criminal Court and its proponents need not to spend sleepless nights because of Burundi’s withdrawal. However, if we are to consider that only one African State Party, Botswana, had ratified the Amendments on the crime of aggression to the Rome Statute of the International Criminal Court, which was activated during the Sixteenth Assembly of States Parties in New York 2017, we have to admit that Africa’s initial enthusiasm of the Rome Statute Justice system is dwindling.

Burundi’s withdrawal from the Rome Statute took effect on 27 October 2017; a year after it had submitted its written notification to the Secretary-General of the United Nations, the depositary of the Rome Statute. This is in conformity with Article 127 of the Rome Statute. Burundi’s written notification does not provide any justifications for its decision to withdraw. In any case provision of justifications is not part of the withdrawal procedures in the Rome Statute. The best source of official explanation available to us is in the statement delivered by Ambassador Vestine Nahimana during the Assembly of States Parties in 2017. In the statement Burundi’s decision was based on what it considered to be a combination of ‘systematic violation of the Rome Statute’ and its concern on the lack of independence of the Office of the Prosecutor in the handling of the situation in Burundi.

Nevertheless, the withdrawal does not have non-retroactive effect. This means Burundi is still expected to fulfil its obligations arising from the period when it was a State Party. That period is between 2004 and 2018. The obligations include clearing the outstanding financial contributions to the International Criminal Court. In addition, the fact that in November 2017, just a month after Burundi had given its written notification to withdraw, the Pre-Trial Chamber III authorised the Office of the Prosecutor to officially open investigations regarding the crimes committed between, April 2015 until October 2017, means that in theory Burundi still has the obligation to cooperate with the Court in this regard. It is hard to envisage how in practical terms this will unfold considering that Burundi had registered its discontent with the Court and the Office of the Prosecutor in particular. It is also common knowledge that within the Rome Statute, there is little that could be done when a State Party fails or decides to contravene its obligations. Unless there is going to be drastic changes either in Burundi or within the United Nations Security Council as far as ensuring compliance with Rome Statute

obligations, it is fair to say, accountability for the alleged atrocities is likely to be long and agonising process for both the victims and high priests of international criminal justice.

If Burundi's justification for withdrawal as stated by Ambassador Nahimana is to be given weight, then perhaps, an alternative mechanism for accountability, outside the Rome Statute Justice System may have to be considered. Prior to the establishment of the International Criminal Court, Burundi had indicated and was interested that it even requested for the establishment of an *ad hoc* tribunal to assist in the investigations and prosecutions of international crimes committed in its territory. Such a request was repeated by the Burundian delegation during the Rome Conference in 1998. As such there might be some value in exploring this as an alternative. The main advantage an *ad hoc* tribunal would have over the Rome Statute is that it would come under the direct authority and support of the United Nations Security Council, which could be useful in terms of ensuring cooperation. Another alternative to consider could be to equip the East African Community Court of Justice with criminal jurisdiction so that it can investigate and prosecute those responsible of atrocities committed in Burundi. Such a mechanism could also be used to ensure accountability in South Sudan.

In the meantime, the dialogue towards addressing some of the key issues behind the growing friction between African States and the International Criminal Court must be intensified and at all levels, at political level, legal level, academic and civil society. It is clear that as we approach the 20-year mark since the adoption of the Rome Statute the nature of dialogue that has occurred has not been candid enough to sustain the African States' enthusiasm for the Rome Statute Justice System. Burundi's withdrawal might be inconsequential, although it might have also opened a window for a serious introspection of the Rome Statute Justice Mechanism.

Bangladesh and Rohingya Refugees; navigating international protection and national security

By Joris van Wijk

Rohingya are one of the most persecuted people in the world today. Systematically targeted, tortured and butchered by the Myanmar government and denied citizenship and socio-economic and cultural rights for decades, Rohingya people have been fleeing to adjoining states, including Bangladesh, for a long time. Since late 2016 more than 500.000 Rohingya refugees have fled Myanmar in response

to the latest outbreak of violence in the province of Rakhine State. During a special session of the Human Rights Council early December 2017, Zeid Ra'ad al-Husseini, the United Nations High Commissioner for Human Rights, did not rule out that the latest round of violence – “acts of appalling barbarity” – present elements of genocide.³⁵ This short contribution does not delve into possible characterization of atrocities committed against Rohingya in Myanmar as one form of international crimes or another. Rather it explores and briefly outlines dilemmas and challenges faced by Rohingya after fleeing the violence. It outlines how massive refugee flows are perceived by Bangladeshi authorities and society as a threat to national security and how the plight of Rohingya seems to be far from over, even after taking 'refuge' away from the imminent massacres and ethnic cleansing.

The far majority of recent Rohingya refugees settled down in neighbouring Bangladesh, where they have been living in a range of different refugee camps. They joined a group of an estimated 500.000 Rohingya who had already fled to Bangladesh before the current crisis (Hasnat et al. 2017). Once in Bangladesh, the plight of the Rohingya does not come to an end. While being freed from the immediate fear of being killed, Rohingya find themselves in subhuman conditions with inadequate food supply, health care and sanitation prevalent in the refugee camps. Furthermore, while the popular public imagination including the government bodies view the Rohingya with a degree of sympathy, they are also construed in Bangladeshi media and mainstream perception as a potential threat to the social and moral order of Bangladeshi society. For example, local media have often blamed the Rohingya for the rising levels of crime in the Cox's Bazaar, the area that boasts the majority of the Rohingya while there are reports of Rohingya women facing 'forced prostitution' in the camps.³⁶ Furthermore, the Rohingya exodus is increasingly portrayed as a possible security threat. Illustrative are the recent remarks by Asaduzzaman Khan, Bangladesh's minister of Home Affairs. Emphasizing that Bangladesh feels a strong humanitarian obligation to assist the Rohingya, he worries about international terror organisations recruiting refugees: "It'll be our threat in the future. These people left everything (...) For their survival, they

³⁵<https://www.nytimes.com/2017/12/05/world/asia/myanmar-rohingya-genocide-un.html>

³⁶ <https://www.reuters.com/article/us-bangladesh-rohingya-sexworkers/clangdestine-sex-industry-booms-in-rohingya-refugee-camps-idUSKBN1CS2WF>

will do anything.”³⁷ These remarks and worries recall Astri Suhrke’s findings on ‘refugee warriors’: individuals in exile may find that the most socially meaningful and economically rewarding activity is to join militants, and refugee camps may serve as potential military bases from which insurgencies take place (Zolberg, Suhrke & Aguayo 1989).

In response, the government of Bangladesh has suggested to introduce voluntary sterilisation in its overcrowded Rohingya camps³⁸ and expressed plans to develop an isolated, flood-prone island in the Bay of Bengal to temporarily house tens of thousands of Rohingya.³⁹ On 23 November 2017 Bangladesh and Myanmar agreed to organize the return of Rohingya within two months, but mid-December still more Rohingya are moving from Myanmar to Bangladesh than the other way around.⁴⁰ There are, in other words, little indications that the plight of the Rohingya will be over any time soon.

The coup that wasn’t a coup: Robert Mugabe steps down

By: Maartje Weerdesteijn

“We wish to make it abundantly clear that this is not a military takeover” said General Moyo on 15 November 2017, in what has been called “the world’s strangest coup”. With military vehicles in the streets and the head of state under house arrest, the man in uniform who had just taken over one of Zimbabwe’s major news stations, lacked credibility. On twitter, commentators decided that “If it looks like a coup, walks like a coup and quacks like a coup, then it’s a coup,” but confusion rose when it did not immediately become clear whether the military wanted to oust Mugabe. The coup that wasn’t a coup, however, signalled the end of Mugabe’s reign. He caved on November 21st 2017, as his own party turned on him and parliamentary procedures were put in place to remove him from power. After 37 years Mugabe’s reign came to an end.

³⁷ <http://www.abc.net.au/news/2017-09-21/rohingya-refugees-a-terror-threat-bangladesh-minister-tells-abc/8966574>

³⁸ <https://www.theguardian.com/world/2017/oct/28/bangladesh-to-offer-sterilisation-to-rohingya-in-refugee-camps>

³⁹ <https://www.reuters.com/article/us-myanmar-rohingya-bangladesh-exclusive/exclusive-crowded-bangladesh-revives-plan-to-settle-rohingya-on-isolated-island-idUSKCN1BG1WN>

⁴⁰ <https://www.reuters.com/article/us-bangladesh-myanmar-rohingya-rohingya-refugees-still-fleeing-from-myanmar-to-bangladesh-unhcr-idUSKBN1E1257>

The ambiguous nature of the coup is perhaps most logically explained by the tough stance that African Union (AU) has been taking in relation to military take-over of power on the continent. Its chair, and president of Guinea, Alpha Condé, was quick to warn that the AU would “never accept a coup d’état in Zimbabwe.” However, as support in the country for the military take-over grew, the AU soon moderated its tone.

The AU’s mild stance was perhaps facilitated by the pretence of legality. While seen as an illegal power grab by most, the Zimbabwean High Court ruled that the intervention was legal in the days following Mugabe’s resignation. These developments coincided with several worrisome incidents, that included allegations of serious human rights violations and it is, therefore, questionable whether the current transfer of power should be seen in a positive light.

The coup attempt was sparked by the firing of vice-president Emmerson Mnangagwa which was probably intended to position Mugabe’s wife Grace as his successor. Mnangagwa now has taken the reigns of power, giving prominent positions to army officials, and will inherit the dictatorial institutions that he himself helped to create. He has been at Mugabe’s side since the very beginning. He fought for liberation alongside Mugabe and is alleged to have been instrumental in the Gukurahundi Matabeleland and Midlands massacres in which approximately 20,000 people lost their lives in an attempt to wipe out the support base of the opposition. He played an important role in the previous regime, rigging the elections and implementing a brutal security regime. His ruthlessness has earned him the nickname “the Crocodile.”

Mnangagwa promised to hold free and fair elections by mid-2018 but the question is whether he is truly willing to risk losing since he is feared, not loved, among the population. It is difficult to imagine that the man who planned and executed some of Mugabe’s most brutal policies can spark a new beginning. While Mugabe will continue to live a life of luxury, the people of Zimbabwe will likely continue to experience hardship.

Zimbabwe has been here before. When Mugabe won the war of independence from the white minority regime of Ian Smith he also inherited the non-democratic institutions of its predecessor that some say have been influential in shaping his brutal regime. Now it’s Mnangagwa’s turn to use the dictatorial state-structure for his own benefit. With a leader that executed Mugabe’s most brutal policies over the past 37 years, and with a high court that effectively legitimized military

interventions in the country's domestic politics, political repression is unlikely to end overnight in Zimbabwe.

RESEARCH

Interviewing Islamic State supporters online: challenges and benefits

By: Pieter Nanninga

Why do people support a group that has become infamous for its bloodshed? Since I started studying the Islamic State's media releases in 2014, I have talked with dozens of IS supporters online – first occasionally, but later in a more systematic way as part of what could be labelled “virtual ethnography”. In unstructured interviews, I have talked with them about topics varying from beheadings, slavery and airstrikes to school exams, Arabian horses and raising toddlers. What are the challenges and benefits of this relatively new and sometimes contested form of research?

Interviewing jihadis online is fascinating, frustrating and, above all, very insightful. Yet it is not without difficulties. The politicised, securitised and juridicalised nature of the field, as well as the online nature of the research, raises questions. How to deal with anonymity, confidentiality, informed consent and data management? How to keep balance between involvement and reflective detachment when talking about emotionally charged topics? How do I know whether the “supporters” really are who they say they are—if they say so at all?

Decades-long reflections of, especially, anthropologists on methodological and ethical aspects of fieldwork, including online interviewing, have provided me with some guidelines. For example, whereas informed consent forms are not workable, I approach my informants transparently, using public accounts showing my name, affiliation and website, and being open with regard to my position and aims. The role of the researcher in the production and interpretation of data requires constant reflection and the “do-no-harm” principle is leading in my online research, including in the storing and sharing of (anonymised) data. And, indeed, I am never one hundred percent certain whether the people I talk to are really the IS supporters they claim to be. Yet I am convinced that I can make a fairly good assessment of their credibility based on long-time connections, lengthy conversations and knowledge of their position within the online jihadi community.

These answers may not always be completely satisfactory. However, the study of jihadism suffers from a major lack of first-hand empirical research.

Offline fieldwork among (active) jihadis is often not doable, which is true for IS in particular. Nevertheless, talking to jihadis is crucial to understand why people participate in or support groups like these. One could argue that, to a certain extent, we have to make do with what we have. Yet I would contend that online research is more than a second-best option. It provides different data than traditional fieldwork.

First of all, participating in jihadis' online environment, observing their online behaviour and engaging in private conversations offers insights into their *online* life, which is often highly significant to them. Experiencing the excitement within the community when IS announces a new video, the collective frustrations about the daily account suspensions and the shared outrage about new reports of civilian casualties due to airstrikes has helped me to grasp their sense of belonging to this (online) community, and the value thereof to these people.

Moreover, due to the low barrier to engage in conversation online, contacts are usually more frequent than in the case of offline fieldwork (especially considering the many obstacles in interviewing jihadis offline). I am in touch with some IS supporters on an almost weekly basis for several years by now. This is necessary, for instance to gain trust and create a sphere of openness. It is also crucial to get to know the people you are talking to. Facial expressions, tone of voice and body language cannot be observed in online interviews. Hence, frequent contacts are crucial to grasp the weight of their words and make sense of their mood, emotions, jokes, etc. Moreover, it is helpful in getting beyond the stereotyped image of jihadis that dominate public perceptions. After all, developing a sense of empathy is crucial to good ethnography.

Yet frequent contact is more than a mere requirement—it is also highly valuable, particularly in combination with the instant accessibility of many IS supporters online. Most supporters are online a lot, which enables me to start conversations at moments I consider worthwhile. Two examples illustrate the value thereof. First, I talked with an IS supporter *during* the November 2015 Paris attacks (which lasted for almost four hours). Accordingly, I was able to notice his excitement each time a new fact (and rumours) emerged and clearly experienced the feeling of empowerment the attacks provided him with. I got a sense of his emotions that night, and especially the—for him satisfactory—feeling of revenge: the civilians casualties (supposedly) caused by coalition bombings that had often upset him were now retaliated against. In short, in a way that would

have been hardly possible via other research methods, online interviews enable me to better understand why some people celebrated the killing and wounding of hundreds of civilians that Friday evening.⁴¹

Second, on 22 December 2016, IS released a video showing three Turkish soldiers being burned alive. The direct accessibility of my online network of IS supporters enabled me to interview one of them immediately after he watched the release. On my question what he thought about the video, he replied that it made him “sick to his stomach.” IS “really shouldn’t” publish videos like these, this long-time IS supporter said: “I don’t understand wallah, the use of this gruesome method isn’t needed now (even if it’s allowed).” Contrary to widely shared perceptions about jihadis in debates about radicalization, propaganda, counter-narratives, etc., this example illustrates that they are not merely passive “sponges” absorbing the materials IS pours out over them. Instead, they are individuals with agency, critically evaluating their sources.

I would probably not have received this emotional first response if I would have conducted an offline interview with this supporter some time after the event. This again shows the added value of online interviews with jihadis. Although the method definitely has its drawbacks, it is not a second-rate substitute for offline forms of ethnographic research. Rather, it is a valuable additional tool to study IS’s appeal across the world.

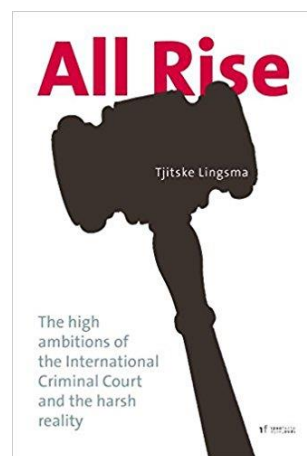
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RECOMMENDED: ALL RISE – TJITSKE LINGSMA

By: Alette Smeulers



‘On a grey, cold day’ in January 2011 Tjitske Lingsma visits the International Criminal Court (ICC) in The Hague, The Netherlands. She hears the poignant testimony of a lady who tells the judges how she was savagely gang raped, experienced the looting of her house and neighbourhood and heard how her brother was killed. After this first visit Lingsma decides to follow the ICC, inspired by the court’s noble task to bring justice for victims, to fight impunity and to go after perpetrators of genocide, crimes against humanity and war crimes. In a vivid and gripping style, and with unique insights, Lingsma tells the story of this prestigious court, that started in 2002 and now has 124 member states. In thematic chapters she portrays its history, functioning, the work of the prosecutor, life in detention, and the precarious situation of witnesses and victims. Lingsma describes in separate chapters the dramatic cases against suspects of international crimes in Kenya, Democratic Republic of the Congo, Central African Republic, Côte d’Ivoire and Libya. But reality proves to be harsh. Despite all hopes, the ICC has not fulfilled its ambition. So far it has convicted four persons for international crimes, while cases against no fewer than nine suspects failed. The court, which has cost 1.5 billion euros by now, is damaged by government obstruction, intimidation of witnesses, its own failures and member states threatening to withdraw. *All Rise* is the sobering account of a court that could not live up to its expectations. But with its important task to bring justice, it is too valuable to fail. The Dutch edition of *All Rise*, which was published in December 2014, was shortlisted for the Brusse Prize - for best journalistic book in The Netherlands’ (From Amazon website)

⁴¹ For a more elaborate account of IS supporters’ responses to the Paris attacks, see my blog post at <https://religionfactor.net/2015/11/24/paris-through-the-eyes-of-is-supporters/>

Tjitske Lingsma is a freelance journalist and author. Her book *All Rise* was first published in Dutch but has now been translated in English in order to reach a broader public. Instead of a legal analysis of its functioning, this book on the ICC stands out because it provides a very personal insight and gripping account into the ICC. The book takes a far more personal than legal approach and describes the people involved in the international criminal justice system as represented by the ICC and what the working of the ICC does to them. Lingsma sat in the public gallery and observed the trials as well as the other people watching the trials – she followed the cases and other relevant news and interviewed the people involved. The book is written with a profound interest and dedication in international criminal justice. It shows the ICC from a different perspective than we are used to. It is an excellent book and a must read to all people interested in the functioning and workings of the ICC.

SELECTED NEW PUBLICATIONS

Compiled by: Alette Smeulers and Suzanne Schot.

NEW JOURNAL

The Journal of Perpetrator Research (JPR) is an inter-disciplinary, peer-reviewed, open access journal committed to promoting the scholarly study of perpetrators of mass killings, political violence and genocide.

The journal fosters scholarly discussions about perpetrators and perpetratorship across the broader continuum of political violence. JPR does not confine its attention to any particular region or period. Instead, its mission is to provide a forum for analysis of perpetrators of genocide, mass killing and political violence via research taking place within the fields of history, criminology, law, forensics, cultural studies, sociology, anthropology, philosophy, memory studies, psychology, politics, literature, film studies and education. In providing this interdisciplinary and cross-disciplinary space the journal moves academic research on this topic beyond, and between, disciplinary boundaries to provide a forum in which robust and interrogative research and cross-curricular discourse can stimulate lively intellectual engagement with perpetrators.

JPR thus not only addresses issues related to perpetrators in the past but also responds to present challenges. The fundamental questions informing the journal include: how do we define, understand and encounter the figure of the perpetrator of political violence? What can we discern about their motivations, and how can that help society and

policy-makers in countering and preventing such occurrences? How are perpetrators represented in a variety of memory spaces including art, film, literature, television, theatre, commemorative culture and education?

BOOKS

Aksenova, M. (2016). *Complicity in international criminal law*, Hart Publishing.

This book tackles one of the most contentious aspects of international criminal law – the modes of liability. At the heart of the discussion is the quest for balance between the accused's individual contribution and the collective nature of mass offending. The principle of legality demands that there exists a well-defined link between the crime and the person charged with it. This is so even in the context of international offending, which often implies 'several degrees of separation' between the direct perpetrator and the person who authorises the atrocity. The challenge is to construct that link without jeopardising the interests of justice.

This monograph provides the first comprehensive treatment of complicity within the discipline and beyond. Extensive analysis of the pertinent statutes and jurisprudence reveals gaps in interpreting accessorial liability. Simultaneously, the study of complicity becomes a test for the general methods and purposes of international criminal law. The book exposes problems with the sources of law and demonstrates the absence of clearly defined sentencing and policy rationales, which are crucial tools in structuring judicial discretion.

Anderson, K. (2017). *Perpetrating Genocide a criminological account*, Routledge.

Focusing on the relationship between the micro level of perpetrator motivation and the macro level normative discourse, this book offers an in-depth explanation for the perpetration of genocide. It is the first comparative criminological treatment of genocide drawn from original field research, based substantially on the author's interviews with perpetrators and victims of genocide and mass atrocities, combined with wide-ranging secondary and archival sources. Topics covered include: perpetration in organizations, genocidal propaganda, the characteristics of perpetrators, decision-making in genocide, genocidal mobilization, coping with killing, perpetrator memory and trauma, moral rationalization, and transitional justice.

An interdisciplinary and comparative analysis, this book utilizes scientific methods with the objective of gaining some degree of insight into the causes of

genocide and genocide perpetration. It is argued that genocide is more than a mere intellectual abstraction – it is a crime with real consequences and real victims. Abstraction and objectivity may be intellectual ideals but they are not ideally humane; genocide is ultimately about the destruction of humanity. Thus, this book avoids presenting an overly abstract image of genocide, but rather grounds its analysis in interviews with victims and perpetrators of genocide in Rwanda, Burundi, Uganda, Bosnia, Cambodia, Bangladesh, and Iraq.

This book will be highly useful to students and scholars with an interest in genocide and the causes of mass violence. It will also be of interest to policy-makers engaged with the issues of genocide and conflict prevention.

Bazyler, M. (2016) *Holocaust, genocide and the law*, Oxford University Press.

A great deal of contemporary law has a direct connection to the Holocaust. That connection, however, is seldom acknowledged in legal texts and has never been the subject of a full-length scholarly work. This book examines the background of the Holocaust and genocide through the prism of the law; the criminal and civil prosecution of the Nazis and their collaborators for Holocaust-era crimes; and contemporary attempts to criminally prosecute perpetrators for the crime of genocide. It provides the history of the Holocaust as a legal event, and sets out how genocide has become known as the "crime of crimes" under both international law and in popular discourse. It goes on to discuss specific post-Holocaust legal topics, and examines the Holocaust as a catalyst for post-Holocaust international justice. Together, this collection of subjects establishes a new legal discipline, which the author Michael Bazyler labels "Post-Holocaust Law."

Behrens, P., O. Jensen & N. Terry (eds.). (2017) *Holocaust and genocide denial – a contextual perspective*, Routledge.

This book provides a detailed analysis of one of the most prominent and widespread international phenomena to which criminal justice systems has been applied: the expression of revisionist views relating to mass atrocities and the outright denial of their existence. Denial poses challenges to more than one academic discipline: to historians, the gradual disappearance of the generation of eyewitnesses raises the question of how to keep alive the memory of the events, and the fact that negationism is often offered in the guise of historical 'revisionist scholarship' also means that there is need for the identification of parameters

which can be applied to the office of the 'genuine' historian. Legal academics and practitioners as well as political scientists are faced with the difficulty of evaluating methods to deal with denial and must in this regard identify the limits of freedom of speech, but also the need to preserve the rights of victims. Beyond that, the question arises whether the law can ever be an effective option for dealing with revisionist statements and the revisionist movement. In this regard, *Holocaust and Genocide Denial: A Contextual Perspective* breaks new ground: exploring the background of revisionism, the specific methods devised by individual States to counter this phenomenon, and the rationale for their strategies. Bringing together authors whose expertise relates to the history of the Holocaust, genocide studies, international criminal law and social anthropology, the book offers insights into the history of revisionism and its varying contexts, but also provides a thought-provoking engagement with the challenging questions attached to its treatment in law and politics.

Borch, F.L. (2017). *Military trials of war criminals in the Netherlands East Indies 1946-1949*, Oxford University Press.

From 1946 to 1949, the Dutch prosecuted more than 1000 Japanese soldiers and civilians for war crimes committed during the occupation of the Netherlands East Indies during World War II. They also prosecuted a small number of Dutch citizens for collaborating with their Japanese occupiers. The war crimes committed by the Japanese against military personnel and civilians in the East Indies were horrific, and included mass murder, murder, torture, mistreatment of prisoners of war, and enforced prostitution. Beginning in 1946, the Dutch convened military tribunals in various locations in the East Indies to hear the evidence of these atrocities and imposed sentences ranging from months and years to death; some 25 percent of those convicted were executed for their crimes. The difficulty arising out of gathering evidence and conducting the trials was exacerbated by the ongoing guerrilla war between Dutch authorities and Indonesian revolutionaries and in fact the trials ended abruptly in 1949 when 300 years of Dutch colonial rule ended and Indonesia gained its independence.

Until the author began examining and analysing the records of trial from these cases, no English language scholar had published a comprehensive study of these war crimes trials. While the author looks at the war crimes prosecutions of the Japanese in detail this book also breaks new ground in exploring the prosecutions of Dutch citizens alleged to have collaborated with their Japanese occupiers. Anyone with a general interest in World

War II and the war in the Pacific, or a specific interest in war crimes and international law, will be interested in this book.

Brandts, C. & S. Karstedt (eds.) (2017) *Transitional Justice and the public sphere – Engagement, legitimacy and contestation*, Hart Publishing.

Transparency is a fundamental principle of justice. A cornerstone of the rule of law, it allows for public engagement and for democratic control of the decisions and actions of both the judiciary and the justice authorities. This book looks at the question of transparency within the framework of transitional justice. Bringing together scholars from across the disciplinary spectrum, the collection analyses the issue from socio-legal, cultural studies and practitioner perspectives. Taking a three-part approach, it firstly discusses basic principles guiding justice globally before exploring courts and how they make justice visible. Finally, the collection reviews the interface between law, transitional justice institutions and the public sphere.

Brouwer, AM & AL Smeulders (Eds.) (2016). *The Elgar Companion to the ICTR*, Elgar.

The Elgar Companion to the International Criminal Tribunal for Rwanda is a one-stop reference resource on this complex tribunal, established in the aftermath of the 1994 genocide in Rwanda, which closed its doors on 31 December 2015. This Companion provides an insightful account of the workings and legacy of the ICTR in the field of international criminal justice.

Surveying and analysing the contributions from different disciplinary angles, the Companion is comprised of four comprehensive parts. It begins with a detailed account of the establishment of the ICTR, covering the setting up of the tribunal, its mandate, structure and personnel. The second part explores substantive law and examines issues such as genocide, crimes against humanity, war crimes, sexual violence and modes of liability. The third part discusses procedural law and explores investigation, arrest, trial/appeal, evidence, rights of the accused, rights of victims and sentencing. It concludes with the fourth part, which considers the contribution of the ICTR to international criminal justice, as well as to the lives of Rwandans.

An important contribution to the jurisprudence of international criminal courts, the Companion will appeal to academics, students and legal practitioners alike. It will be fascinating reading for anyone interested in international criminal law or the recent history of Rwanda.

Clarke, P., Knottnerus A., E. de Volder (eds.) (2017) *Africa and the ICC*, Cambridge University Press.

Africa and the ICC: Perceptions of Justice comprises contributions from prominent scholars of different disciplines including international law, political science, cultural anthropology, African history and media studies. This unique collection provides the reader with detailed insights into the interaction between the African Union and the International Criminal Court (ICC), but also looks further at the impact of the ICC at a societal level in African states and examines other justice mechanisms on a local and regional level in these countries. This investigation of the ICC's complicated relationship with Africa allows the reader to see that perceptions of justice are multilayered.

Fishman, B. (2016) *The master plan – ISIS, Al Qaeda and the Jihadi strategy for final victory*, Yale University Press.

Given how quickly its operations have achieved global impact, it may seem that the Islamic State materialized suddenly. In fact, al-Qaeda's operations chief, Sayf al-Adl, devised a seven-stage plan for jihadis to conquer the world by 2020 that included reestablishing the Caliphate in Syria between 2013 and 2016. Despite a massive schism between the Islamic State and al-Qaeda, al-Adl's plan has proved remarkably prescient. In summer 2014, ISIS declared itself the Caliphate after capturing Mosul, Iraq—part of stage five in al-Adl's plan. Drawing on large troves of recently declassified documents captured from the Islamic State and its predecessors, counterterrorism expert Brian Fishman tells the story of this organization's complex and largely hidden past—and what the master plan suggests about its future. Only by understanding the Islamic State's full history—and the strategy that drove it—can we understand the contradictions that may ultimately tear it apart.

Fortin, K. (2017) *The accountability of armed groups under human rights law*, Oxford University Press.

Today the majority of the armed conflicts around the world are fought between States and armed groups, rather than between States. This changed conflict landscape creates an imperative to clarify the obligations of armed groups under international law. While it is generally accepted that armed groups are bound by international humanitarian law, the question of whether they are also bound by human rights law is controversial. This book brings significant new understanding to the question of whether and when armed groups might be bound by

human rights law. Its conclusions will benefit international law academics, legal practitioners, and political scientists and anthropologists working on issues related to rebel governance and civil wars.

Hayashi, N. & C.M. Bailliet (eds.) (2017), *The legitimacy of international criminal tribunals*, Cambridge University Press.

With the ad hoc tribunals completing their mandates and the International Criminal Court under significant pressure, today's international criminal jurisdictions are at a critical juncture. Their legitimacy cannot be taken for granted. This multidisciplinary volume investigates key issues pertaining to legitimacy: criminal accountability, normative development, truth-discovery, complementarity, regionalism, and judicial cooperation. The volume sheds new light on previously unexplored areas, including the significance of redacted judgements, prosecutors' opening statements, rehabilitative processes of international convicts, victim expectations, court financing, and NGO activism. The book's original contributions will appeal to researchers, practitioners, advocates, and students of international criminal justice, accountability for war crimes and the rule of law.

Ingelaere, B. (2016) *Inside Rwanda's Gaca courts – seeking justice after genocide*, University of Wisconsin Press.

After the 1994 genocide in Rwanda, victims, perpetrators, and the country as a whole struggled to deal with the legacy of the mass violence. The government responded by creating a new version of a traditional grassroots justice system called gacaca. Bert Ingelaere, based on his observation of two thousand gacaca trials, offers a comprehensive assessment of what these courts set out to do, how they worked, what they achieved, what they did not achieve, and how they affected Rwandan society.

Weaving together vivid firsthand recollections, interviews, and trial testimony with systematic analysis, Ingelaere documents how the gacaca shifted over time from confession to accusation, from restoration to retribution. He precisely articulates the importance of popular conceptions of what is true and just. Marked by methodological sophistication, extraordinary evidence, and deep knowledge of Rwanda, this is an authoritative, nuanced, and bittersweet account of one of the most important experiments in transitional justice after mass violence.

LaFree, G. & J.D. Freilich (eds.) (2016) *The handbook of the Criminology of Terrorism*, Wiley.

The Handbook of the Criminology of Terrorism features a collection of essays that represent the most recent criminological research relating to the origins and evolution of, along with responses to, terrorism, from a criminological perspective. Offers an authoritative overview of the latest criminological research into the causes of and responses to terrorism in today's world. Covers broad themes that include terrorism's origins, theories, methodologies, types, relationship to other forms of crime, terrorism and the criminal justice system, ways to counter terrorism, and more. Features original contributions from a group of international experts in the field. Provides unique insights into the field through an exclusive focus on criminological conceptual frameworks and empirical studies that engage terrorism and responses to it

Lewy, G. (2017) *Perpetrators – the world of the Holocaust killers*, Oxford University Press.

The Nazis' attempt to annihilate the Jewish people, the Holocaust, continues to raise a disturbing question. About six million defenseless men, women, and children were murdered for no reason but their ancestry. Close to two million Jews were killed in mass shootings, while the remainder were asphyxiated or worked and starved to death. How could such terrible deeds happen in the heart of Christian Europe and among a nation known for its poets and thinkers, a people that had produced Schiller, Goethe, Bach, and Beethoven? What had converted so many seemingly ordinary people into killers, willing participants in what is probably the worst crime in modern history? That is the question Guenter Lewy seeks to answer in this book. Lewy provides a critical synthesis of recent literature on the perpetrators, broadening the discussion and developing a more complete and systematic answer to the question of why so many ordinary German people became mass murderers, drawing on previously untapped valuable sources, including officers' and soldiers' diaries; some 35,000 letters written by soldiers serving in the East, many of which describe the murder of Jews; the recollections of Jewish survivors, and most importantly, the record of the trials of hundreds of Nazi perpetrators by German courts. The result is a wealth of information about the Holocaust in all its horrible particulars and about those who carried out those hideous deeds. The book systematically examines the role of individual pathology, of specifically German factors such as obedience to authority, and the impact of ideology on group behavior. The actual perpetrators, Lewy concludes, acted out of a variety of motives. Some were convinced haters of Jews, while others killed out of a sense of duty, to advance their career, because they followed orders, or because they wanted to

conform to the group. There was no uniform Nazi perpetrator type.

Guenter Lewy grew up in Germany and lived some six years under Nazi rule. During the November 1938 pogrom known as Kristallnacht, he was on the receiving end of storm-trooper brutality, and his father was taken to the Buchenwald concentration camp, barely surviving his three-month ordeal there. The question of "why they did it," therefore, is of far more than theoretical interest for the author—it is a passionate attempt to illuminate a dismal chapter of history that cannot be forgotten.

Lynch, O. & J. Argomanitz, (2017). Victims and perpetrators of terrorism – exploring identities, roles and narratives, Routledge

While the perpetrators of political violence have been the subject of significant academic research, victims of terrorism and political violence have rarely featured in this landscape. In an effort to capture the vast complexity of terrorism, and to widen the scope of the agenda that informs terrorism research, this book presents a series of analyses that examines the role of the perpetrators, the experience of the victims, the public and media perceptions of both, and given the inherent intricacy of the phenomenon, how we might think about engaging with perpetrators in an effort to prevent further violence. By considering the role of the many actors who are central to our understanding and framing of terrorism and political violence, this book highlights the need to focus on how the interactivity of individuals and contexts have implications for the emergence, maintenance and termination of campaigns of political violence. The volume aims to understand not only how former perpetrators and victims can work in preventing violence in a number of contexts but, more broadly, the narratives that support and oppose violence, the construction of victimisation, the politicisation of victimhood, the justifications for violence and the potential for preventing and encouraging desistance from violence.

This book will be of much interest to students of terrorism and political violence, victimology, criminology, security studies and IR in general.

Ohlin, J.D., L. May, Finkelstein (eds.) (2017) Weighing lives in war, Oxford University press

The chief means to limit and calculate the costs of war are the philosophical and legal concepts of proportionality and necessity. Both categories are meant to restrain the most horrific potential of war. The volume explores the moral and legal issues in the modern law of war in three major categories. In so doing, the contributions will look for new and

innovative approaches to understanding the process of weighing lives implicit in all theories of *jus in bello*: who counts in war, understanding proportionality, and weighing lives in asymmetric conflicts. These questions arise on multiple levels and require interdisciplinary consideration of both philosophical and legal themes.

Plesch, D. (2017) Human Rights after Hitler – the lost history of prosecuting axis war crimes, George Town University Press.

Human Rights after Hitler reveals thousands of forgotten US and Allied war crimes prosecutions against Hitler and other Axis war criminals based on a popular movement for justice that stretched from Poland to the Pacific. These cases provide a great foundation for twenty-first-century human rights and accompany the achievements of the Nuremberg trials and postwar conventions. They include indictments of perpetrators of the Holocaust made while the death camps were still operating, which confounds the conventional wisdom that there was no official Allied response to the Holocaust at the time. This history also brings long overdue credit to the United Nations War Crimes Commission (UNWCC), which operated during and after World War II.

Sands, Ph (2017) East West Street, Weidenfeld Nicholson.

A profound and profoundly important book – a moving personal detective story, uncovering of secret pasts, and a book that explores the creation and development of world-changing legal concepts that came about as a result of the unprecedented atrocities of Hitler's Reich. *East West Street* looks at the personal and intellectual evolution of the two men who simultaneously originated the ideas of genocide and crimes against humanity both of whom, not knowing the other studied at the same university with the same professors, in a city little known today that was a major cultural centre of Europe, "the little Paris of Ukraine", a city variously called Lemberg, Lwow, Lvov or Lviv. It is also a spellbinding family memoir, as the author traces the mysterious story of his grandfather, as he manoeuvred through Europe in the face of Nazi atrocities.

Sjoberg, L. (2016). Women as war time rapist – beyond sensation and stereotyping, NYU Press

Very few women are wartime rapists. Very few women issue commands to commit sexual violence. Very few women play a role in making war plans that feature the intentional sexual violation of other women. This book is about those very few women. *Women as Wartime Rapists* reveals the

stories of female perpetrators of sexual violence and their place in wartime conflict, legal policy, and the punishment of sexual violence. More broadly, Laura Sjoberg asks, what do the actions and perceptions of female perpetrators of sexual violence reveal about our broader conceptions of war, violence, sexual assault, and gender?

This book explores specific historical case studies, such as Nazi Germany, Serbia, the contemporary case of ISIS, and others, to understand how and why women participate in rape during war and conflict. Sjoberg examines the contrast between the visibility of female victims and the invisibility of female perpetrators, as well as the distinction between rape and genocidal rape, which is used as a weapon against a particular ethnic or national group. Further, she explores women's engagement with genocidal rape and how some orchestrated the ethnic cleansing of entire regions. A provocative approach to a sensationalized topic, *Women as Wartime Rapists* offers important insights into not only the topic of female perpetrators of wartime sexual violence, but to larger notions of gender and violence with crucial cultural, legal, and political implications.

Steer, C. (2017). *Translating guilt – identifying leadership liability for mass atrocity crimes*, T.M.C Asser Press.

This book seeks to understand how and why we should hold leaders responsible for the collective mass atrocities that are committed in times of conflict. It attempts to untangle the debates on modes of liability in international criminal law (ICL) that have become truly complex over the last twenty years, and to provide a way to identify the most appropriate model for leadership liability. A unique comparative theory of ICL is offered, which clarifies the way in which ICL develops as a patchwork of different domestic criminal law notions. This theory forms the basis for the comparison of some influential domestic criminal law systems, with a view to understanding the policy and cultural reasons for their differences. There is a particular focus on the background of the German law which has influenced the International Criminal Court so much recently. This helps to understand, and seek a solution to, the current impasses in the debates on which model of liability should be applied. An entire chapter of the book is devoted to considering why leaders should be held responsible for crimes committed by their subordinates, from legal, moral and pragmatic perspectives. The moral responsibility of leaders is translated into criminal liability, and the different domestic models of liability are translated to the international context, in such a way as to appeal to advanced students of

ICL, academics, and practitioners who want to understand the complexities of leadership liability in international criminal law today and identify the best way to approach it.

Viola, L. (2018) *Stalinist Perpetrators on trial*, Oxford University Press.

Between the summer of 1937 and November 1938, the Stalinist regime arrested over 1.5 million people for "counterrevolutionary" and "anti-Soviet" activity and either summarily executed or exiled them to the Gulag. While we now know a great deal about the experience of victims of the Great Terror, we know almost nothing about the lower- and middle-level Narodnyi Komissariat Vnutrennikh Del (NKVD), or secret police, cadres who carried out Stalin's murderous policies. Unlike the postwar, public trials of Nazi war criminals, NKVD operatives were tried secretly. And what exactly happened in those courtrooms was unknown until now.

In what has been dubbed "the purge of the purgers," almost one thousand NKVD officers were prosecuted by Soviet military courts. Scapegoated for violating Soviet law, they were charged with multiple counts of fabrication of evidence, falsification of interrogation protocols, use of torture to secure "confessions," and murder during pre-trial detention of "suspects" - and many were sentenced to execution themselves. The documentation generated by these trials, including verbatim interrogation records and written confessions signed by perpetrators; testimony by victims, witnesses, and experts; and transcripts of court sessions, provides a glimpse behind the curtains of the terror. It depicts how the terror was implemented, what happened, and who was responsible, demonstrating that orders from above worked in conjunction with a series of situational factors to shape the contours of state violence.

Based on chilling and revelatory new archival documents from the Ukrainian secret police archives, *Stalinist Perpetrators on Trial* illuminates the darkest recesses of Soviet repression — the interrogation room, the prison cell, and the place of execution — and sheds new light on those who carried out the Great Terror.

Weerdestijn, M. (2016). *The rationality of dictators – towards a more effective implementation of the responsibility to protect*, Intersentia.

A non-democratic system of government is an important risk factor for the perpetration of atrocity crimes, meaning genocide, crimes against humanity, war crimes and ethnic cleansing. At the

2005 World Summit the international community accepted the responsibility to protect populations from these crimes when the domestic state is failing to do so. The implementation of the responsibility to protect, however, leaves much to be desired. This book studies the role dictators play in orchestrating mass atrocities and analyses their decision-making process when the international community tries to stop or mitigate the perpetration of these crimes. Through a comparative case study of Pol Pot and Slobodan Milosevic it argues that the role ideology plays in the decision-making process of the dictator is an important determinant of their responsiveness. In doing so, it challenges the common notion that all dictators are primarily motivated by retaining their position of power and argues that while dictators are frequently characterised as raging mad men, this is not necessarily always the case. It rather argues in favour of a more nuanced approach to rationality, that uses the work of Max Weber to acknowledge that different types of rationality exist, when analysing the decision-making process of dictators. The book is therefore an indispensable resource for scholars who are interested in the role of dictators in bringing forth and stopping mass atrocities and for anyone who wants more insight into the rationality of dictators.

Weisband, E. (2017) *The macabresque – human violation and hate in genocide, mass atrocity and enemy-making*, Oxford University Press.

Studies of genocide and mass atrocity most often focus on their causes and consequences, their aims and effects, and the number of people killed. But the question remains, if the main goal is death, then why is torture necessary? This book argues that genocide and mass atrocity are committed not as an end in themselves but as a means to pursue sustained and systemic torture — the spectacle of violence — against its victims. Extermination is not the only, or even the primary, goal of genocidal campaigns.

In *The Macabresque*, Edward Weisband looks at different episodes of mass violence (Chinese Cultural Revolution, the Holocaust, post-Ottoman Turkey, Cambodia, Rwanda, and Bosnia, among other instances) to consider why different methods of violence were used in each and how they related to the particular cultural milieu in which they were perpetrated. He asserts that it is not accidental that certain images capture our memory as emblematic of specific genocides or mass atrocities (the death marches of the Armenian genocide, mass starvation in the Ukraine, the killing apparatus and laboratories of the Holocaust, the killing fields of Cambodia) because such violence assumes a kind of style each time and place it arises. Weisband looks at these variations in terms of their aesthetic

or dramaturgical style, or what he calls the macabresque. The macabresque is ever present in genocide and mass atrocity across time, place and episode. Beyond the horrors of lethality, it is the defining feature of concentration and/or death camps, detention centers, prisons, ghettos, killing fields, and the houses, schools and hospitals converted into hubs for torture. Macabresque dramaturgy also assumes many aesthetic forms, all designed to inflict hideous pain and humiliating punishments, sometimes in controlled environments, but also during frenzied moments of staged public horror. These kinds of performative violations permit perpetrators to revel in their absolute power but simultaneously to project hatred, revenge and revulsion onto victims, who embody the shame, humiliation and loss felt by their torturers. By understanding how and why mass violence occurs and the reasons for its variations, *The Macabresque* aims to explain why so many seemingly normal or "ordinary" people participate in mass atrocity across cultures and why such egregious violence occurs repeatedly through history.

PhD-DEFENCES

PhD-Defence – Carola Lingaas, University of Oslo - ‘Race’: Relic or Useful Concept?

The annihilation of Jews during the Holocaust, the brutal Khmer Rouge regime in Cambodia, the genocide against the Tutsi in Rwanda, – and more recently the persecution of Rohingya in Myanmar – are just a few examples of serious crimes that deeply shock the international community. These horrible events are often accompanied by the pledge “Never Again!” Sadly, however, atrocities happen time and again.

International criminal law defines who is protected from such crimes and, conversely, who can be punished for committing them. Members of racial groups are protected under international law against genocide, persecution, and apartheid. But what is race? In 2017, is it legitimate to talk about race – or is race perhaps better stowed away as a relic? And why was this contentious term not even discussed when the Rome Statute of the International Criminal Court (ICC) was drafted?

The Nazis defined the Jews as a race inferior to the Aryan race, the Khmer Rouge identified the ‘new people’ as enemies with a biologically dissimilar essence, and in Darfur (Sudan), the Janjaweed militia labelled their enemies derogatorily as ‘Zourga’, or black Africans. Although natural sciences have long determined that humankind

cannot be meaningfully divided into biologically different races, the social significance of race remains high. Rather than attempting to objectively construct distinct racial groups, Carola Lingaas' PhD dissertation on "The Concept of Race in International Criminal Law" suggests that judges in international criminal trials should consider perpetrators' inner thoughts. Their mind-sets will determine the protected racial group.

The *Akayesu* trial judgment of the International Criminal Tribunal for Rwanda (ICTR) was the first ever conviction for the crime of genocide following a trial by an international criminal tribunal. This judgment is the cornerstone of the legal definition of the protected groups of genocide, including the racial group. Carola Lingaas' dissertation follows the development of the jurisprudence on the protected groups of genocide from *Akayesu* until more recent decisions by the ICC and the Extraordinary Chambers in the Courts of Cambodia (ECCC).

"The conventional definition of racial group," *Akayesu* held, "is based on the hereditary physical traits often identified with a geographical region, irrespective of linguistic, cultural, national or religious factors".⁴² The ICTR Trial Chamber did not provide any supporting evidence, legal or extra-legal, to substantiate this definition. The reference to 'hereditary physical traits' implies an objective approach to a scientifically highly disputed method, namely the identification of people by means of their physical appearance, such as their skin color. According to an English dictionary, hereditary signifies "genetically transmitted or transmittable from parent to offspring."⁴³ Defining race as the genetic transmission of physical traits is not only scientifically wrong, it also preserves outdated and contentious methods of classifying people.

Lingaas' research shows that while the judgments of the different international criminal courts have gradually moved away from the objective definition of the *Akayesu* trial judgment, they have never fully endorsed a subjective, perpetrator-based approach to defining the protected groups of genocide. She argues that an evolutive interpretation of the term 'race' for international criminal law coheres in its result with the recognition of the inherent subjectivity of a (pre-) genocidal process.

While social sciences have long recognized the importance of this process, in which a group of 'others' is identified, stigmatized, discriminated, and finally dehumanized, it is rarely discussed in judgments or legal scholarship. Prior to any genocide - the ultimate hate crime - commonalities between 'us' and 'them' are removed. Instead, dissimilarities are enhanced, often by means of communication such as propaganda, to the point where the perpetrator calls for the extermination of the 'others'.

Besides the strong legal component, Carola Lingaas' dissertation incorporates in its analysis social scientific research, according to which most cases of mass violence are preceded by so-called 'othering'. In this process, the victim group is presented as innately and therefore immutably different, inferior, and at the same time a threat. In the eyes of the perpetrator, the members of the victim group consist of an inherently different essence that threatens the survival of the perpetrator's own (real or imagined) group. Threat is a key element that is present in all cases of genocide. In the process of othering, a dichotomy between 'us' and 'them' is created. It forms an abyss, where there is no middle-ground and where individuals are forced to take side. The marginalized 'other' group can, notably, be an imagined identity, entirely dependent on the perpetrator's perceptions.

This dynamic of setting apart a group defined as different is particularly true for the crime of genocide, but elements of othering are equally present in the crimes of apartheid and persecution that also protect members of, among other, racial groups. As such, the interpretation of 'racial group' (for the crimes of genocide and apartheid) and 'racial grounds' (for the crime of persecution) should always be subjectively defined from the view of the perpetrator.

In its conclusion, Carola Lingaas' study suggests that race in international criminal law should be constructed based upon the perpetrator's mind. The perpetrator's (objectively) observable demeaning and dehumanizing behavior reveals his understanding of the victims. As such, 'race' becomes a matter of proof: if the perpetrator perceives his victims as members of a different (and, typically, an inferior) racial group and manifests this understanding through his behavior, he can be found guilty for committing an international crime against a racial group.

⁴² *The Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Trial Judgment (2 September 1998), para. 514.

⁴³ <http://www.merriam-webster.com/dictionary/hereditary> (accessed 29 November 2017).

CONFERENCES

EXPERT MEETING: Punishing International Crimes in Domestic Courts: Sentencing, Incarceration and Reintegration

By: Adina-Loredana Nistor

“Time is the longest distance between two places.” -

Tennessee Williams, The Glass Menagerie

They say time heals all wounds. That the pain diminishes, that the sorrow quietens. But can such a statement hold true when the wounds inflicted bear the memory of extraordinary violence, committed in extraordinary circumstances, during vicious conflicts that have over and over again shocked the world? Until a few decades ago, victims of mass atrocities were regarded as collateral damage in what were deemed to be necessary battles, thrives for independence and power, struggles between various groups of people, all wanting to gain a significant spot on the world map. However, the way in which the world had been responding to armed conflict and often unnecessary violence inflicted on civilians was about to change. And this change would bring new approaches to how perpetrators of gross human rights violations were about to be held responsible and how the punishment received would fit the crimes.

On the 12th of June 2017, professionals trained in (international) criminal law attended the Expert Meeting “Punishing International Crimes in Domestic Courts: Sentencing, Incarceration and Reintegration” organized in Amsterdam, the Netherlands, by the Centre for International Criminal Justice (CICJ), VU University Amsterdam, the Netherlands Institute for the Study of Crime and Law Enforcement (NSCR) and supported by a VENI research grant from the Dutch Organization for Scientific Research (NWO), by the NSCR and the A-lab. Through four moderated panels, the experts from around the world addressed (i) theoretical considerations on the issue; and the situation of domestic sentencing practices for international crimes in countries from (ii) former Yugoslavia, (iii) Latin America and (iv) Africa & Europe. The meeting, presided by Barbora Hola and Joris van Wijk from VU Amsterdam, opened with an introductory overview of the topic and on the historical considerations that need to be taken into account when discussing the present time reality of international criminal law.

It was only in the aftermath of WWII that a consensus was reached and when international legal recognition that crimes could invoke individual responsibility was achieved. This precedent created a split between two worlds: a world before the term genocide was coined, and the new world which now had a name for the unconceivable intentional destruction of people. Numerous international trials have taken place since the Nuremberg judgements were delivered. Prosecutions at domestic courts are also increasingly taking place and those responsible for monstrous crimes against humanity, war crimes and genocide are being punished. In the realm of ordinary, domestic crimes, imprisonment is a common form of punishment for violent offences in numerous countries. A similar approach has been adopted at the international level where international crimes have been prosecuted. However, despite the creation of various courts and tribunals and of the permanent International Criminal Court (the ICC), the numerous (imprisonment) sentences that have been passed and the fact that many international prisoners have served their time and have even returned to their home countries, an international penology (or practice) to offer guidance on how to address international perpetrators in terms of rehabilitation or integration is still lacking behind. Nevertheless, the enforcement of these international punishments continues to take place at the domestic level, in the prisons of a small number of States, which agreed to accept international prisoners.

International standards, impoverished domestic prisons: “the prisoners eat better than the staff”

A few of the panellists discussed the issue of international versus national standards. When envisioning a harmonization of the two, one cannot help but notice the dichotomy this process entails. Certain African countries regard the international criminal system, which for many is embodied in the ICC, as a force that separates the two (Africa and the ICC), while it seeks to have them collaborate. One of the speakers at the meeting underlined that the problem may not be one of a clash between domestic and international standards, since most African countries adhered to regional or international standards, but that is rather a matter of (insufficient to non-existing) resources. It is not for a lack of willingness that certain countries find it challenging to offer conditions of imprisonment that do not infringe upon the rights of the imprisoned, but rather the financial burden of achieving such conditions. In many national prisons, issues such as over-crowding and overall extremely poor conditions become even more controversial when the same buildings have separate wing for international prisoners, which are often created with the assistance of the international community. These wings adhere to higher

international standards, and their prisoners benefit of better overall conditions compared to other, domestic prisoners. To quote one panellist, they “eat better than the staff” that work in these institutions. Ultimately, as the international standards are indeed an ideal that cannot be reached by all, they nevertheless serve as a model. Nations should always strive to reach this ideal, and not take steps back or lower the bar. On the other hand, if prison conditions of those considered “the most responsible” tried by the international courts are so much better compared to many of their followers tried and incarcerated by domestic courts, in ordinary existing prison, one might wonder what message such system sends.

Between then and now, between atrocities and trials

All presentations discussed different implementations of international standards into various national systems, and how the two merged and created new hybrids. Judges working in international courts and tribunals also bring with them experiences gained while working in domestic courts, thus shaping the way in which international criminal law is applied throughout proceedings and sentencing. The speakers also discussed how societal needs differ from the end of a conflict, when a retributive approach is often sought, to the moment the conflict and the crimes start to become history and other societal needs of often take over. As atrocities slowly become distant memories, societies transform, the laws change and the passing of time becomes a mitigating factor for those who stand trial for *past* crimes. Those responsible of heinous offences have often times been relieved from their sentences as a result of blanket pardons issued by certain governments, or their time in prison has been significantly reduced based on the perpetrators’ ‘good behaviour’ while incarcerated. The common thread between national and international ways of addressing international crimes remains a lengthy distance in time - and sometimes also in space - from the commission of atrocities. The international courts that have been put in place are oftentimes far away from the societies that they aim to address and even reconcile, they are seen as isolated and retributive systems. More often than not an imprisonment sentence rendered in an international court do not meet the victims’ expectations of justice. Oftentimes, those who put their hope in these tribunals to offer a punishment that would fit the extent of the atrocity committed are disappointed by the results. Other forms of punishment may indeed be more appropriate depending on the specific background of the conflict. And in this regard, it is the domestic systems where diversity can be found. Rwanda’s system of community justice known as *gacaca* courts for example, has

also the role to advance reconciliation to affected communities. Trials offer victims the possibility to learn the truth about the death of their loved ones. And perpetrators the opportunity to confess, show remorse for their crimes and ask for. Also, the punishments rendered in such trials include but are not limited to imprisonment and some offenders pay for their offences through community work. Similarly, the peace agreement that the government of Colombia signed with the Revolutionary Armed Forces of Colombia, or FARC, stipulates that FARC members who committed or ordered crimes but confess to them have the option of working “community service” projects and acts of reparation instead of being imprisoned. One year after the peace agreement has been signed, the agreement is fragile and it is unclear whether it will last. But the mechanism is in place. At the international courts and tribunals, which serve the role of punishing those most responsible, or the masterminds behind the large scale and systematic crimes, the only type of punishment rendered is imprisonment. The international approach lacks alternatives, but it also lacks the resources to implement different sanctions. At the same time, it is perhaps not even desirable to expect that the national and the international systems “behave” in the same way.

As one speaker noted, to compare (thousands of) trial cases that have been taking place in the domestic courts, to the few, yet prominent cases at international courts and tribunals, while feasible to certain extent, it becomes extremely complex when looking at the contexts in which both justice mechanisms operate. Domestic courts frequently need to address and factor in many different, often conflicting political, societal and pragmatic needs. The international criminal courts, on the other hand, have often times been criticized for operating in a relative vacuum, for being distant from where the conflicts took place and the societies that ultimately, they seek to deliver justice to.

As more and more time passes since the commission of crimes, the bigger the distance between the two places: where it happened and where it was prosecuted. Even if geographically the space is the same, the social background and the shape justice takes is nevertheless different.

CONFERENCE IAGS: International Association of Genocide Scholars Conference 2017 – Australia By: Melanie O’Brien

In July 2017, the International Association of Genocide Scholars (IAGS) Conference was held at the University of Queensland in Brisbane, Australia; the first time an IAGS conference has been held in the Asia-Pacific region. Co-hosted by

the [TC Beirne School of Law](#) and the [Asia-Pacific Centre for the Responsibility to Protect \(APR2P\)](#), and co-convened by [Dr Melanie O'Brien](#) and [Dr Annie Pohlman](#), the conference theme was Justice and the Prevention of Genocide.

With 200 attendees from 29 countries, the conference promoted the global concern of growing crises of mass violence around the world, and discussion on means and methods to reduce mass violence. Papers addressed justice and prevention issues relating to past and present situations, from Australian colonial genocide to the Holocaust, Rwanda, Indonesia, Japan, Armenia, Iraq and the Rohingya. Other presentations focused on thematic areas such as art, culture, film studies, memory, transitional justice, trauma and education, and how these fields in particular can contribute to genocide prevention and justice for mass atrocities.

Keynotes showcased international and predominantly Australian expertise in the field of atrocity studies, delivered by local indigenous elder [Dr Lilla Watson](#); R2P expert [Professor Alex Bellamy](#); head of the ICC's Gender and Children's Unit, Gloria Atiba Davies; Deputy International Co-Prosecutor of the ECCC, William Smith AO; Asian war crimes historian [Professor Robert Cribb](#); and scholar of colonial atrocities against indigenous Australians, [Professor Lyndall Ryan](#).

While much of the conference was focused on academic presentations, there were also other events, including *Culture Under Attack*, a photographic exhibition hosted by the [Australian Red Cross](#) and the APR2P; and a screening of the film *Denial* which included a panel discussion on the film and its issues with [Dr Kirril Shields](#), [Professor Henry Theriault](#) and [Dr Ted Nannicelli](#). After the conference, some attendees went on an excursion to the Gold Coast, where they learnt about Australian Aboriginal culture, and were able to see and pat native animals.

Genocide scholars carry out crucial work on understanding genocide and other mass atrocities. Being a multi-disciplinary organisation, IAGS enables scholars to learn about developments in diverse fields of study, which serves only to enrich understanding and analysis of mass atrocities and thus how we can prevent and punish them.

IAGS2017 was made possible with [the generous support of sponsors](#).

MISCELLANEOUS

IMPACT: Center against Human Trafficking and Sexual Violence in Conflict

By: Eefje de Volder and Anne-Marie de Brouwer

Early 2017, we started our own organisation: IMPACT: Center against Human Trafficking and Sexual Violence in Conflict.

Human trafficking and conflict-related sexual violence are not 'easy going' subjects. Why decide to specialise in these phenomena? Whether it is for profit, power or for demoralising purposes, in both of these crimes human beings are the targets. Vulnerable people – men, women and children – fall victim of the cruel intentions of others. We have taken this intrinsic injustice of being targeted for the simple reason of being in a more susceptible position than others at heart and it has motivated us to contribute to addressing and combatting these crimes and to support and give voice to those who are unable to fight against this injustice alone.

Since a few years we have been contemplating setting up a centre of expertise. Even though we both were already doing research, giving advice, offering training and education, and implementing empowerment projects in our particular field of expertise, we felt that we could accomplish even more when we would join forces.

While human trafficking and conflict-related sexual violence may, at first glance, appear to be very distinct wrongdoings, in practice the underlying issues are the same, particularly when focussing on human trafficking for sexual exploitation. The forms of sexual violence that may come into play, the stigma that is still persistent in relation to female perpetrators and male victims, the difficulties children face that are born as a result of the crimes are just a few of the cross-cutting issues that both phenomena share.

By combining the knowledge of two distinct fields, we believe to be able to contribute in a distinct way to the quest to combat both crimes and to offer justice to victims. We do this through research and advice, education and awareness, training and capacity building, and empowerment project and advocacy. This year we started, for instance, with a Summer School on conflict-related sexual violence and human trafficking, provided training to Ugandan law officials on the prosecution of conflict-related sexual violence, and conducted

research on human trafficking, in particular forced labour.

Interested in learning more about our activities or to connect, please contact us via e-mail (info@impact-now.org), visit our website (www.impact-now.org) or follow us on social media @impctnow (Facebook, Twitter, LinkedIn, Instagram).

European Criminology Group on Atrocity Crimes and Transitional Justice (EACTJ)

The European Criminology Group on Atrocity Crimes and Transitional Justice (EACTJ) provides a network for European criminologists who are engaged in research on atrocity crimes and transitional justice, whether in or on Europe, or globally. The aim of this Working Group is to enhance the contribution of criminology and criminologists in this field, to stimulate research in and on Europe and to promote exchange between European and international researchers. The group collaborates with other networks and research groups in the field. The Supranational Criminology Network is represented in the group by its founder, Professor Alette Smeulers, University of Groningen, Netherlands. With its focus on researchers in Europe, it is nonetheless global in its perspectives. The group was founded in 2013, and has thrived since then with an increasing membership. To become a member please contact: n.knust@mpicc.de

Website: <https://eactj.org/>

PRIZE: Stephan Parmentier, KU Leuven

Stephan Parmentier was awarded with an important prize by the Victimology Society of Serbia in November 2017. He won the 'Award for contribution to the development of non-conflict and comprehensive approach to dealing with the war and ward crimes "Third way"'. We wish to congratulate Stephan Parmentier with this well-deserved prize.



SUPRANATIONALCRIMINOLOGY

The website supranationalcriminology.org is currently off-line as it will be moved to a new provider. As soon as this is realized you will be notified.

SUBSCRIPTION

The newsletter will be sent electronically to all who have signed up on the website. Scholars who conduct research in the field of international crimes, such as genocide, war crimes, crimes against humanity and other gross human rights violations, international (criminal) law or any other relevant subject matter are invited to send us their details and they will be enlisted on the website. In case you are interested: please contact us: a.l.smeulers@rug.nl and give your names, position, institutional affiliation, e-mail address, research interest and website and we will enlist you as a scholar within two weeks.

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