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War Crimes Prosecution Watch is a bi-weekly e-newsletter that compiles official documents and articles from major news sources detailing and analyzing salient issues pertaining to the investigation and prosecution of war crimes throughout the world. To subscribe, please email warcrimeswatch@pilpg.org and type "subscribe" in the subject line.

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INTERNATIONAL CRIMINAL COURT

Central African Republic & Uganda

Official Website of the International Criminal Court
ICC Public Documents - Cases: Central African Republic
ICC Public Documents - Situation in Uganda

On the Brink of Genocide - Understanding What's Happening in the Central African Republic
AllAfrica.com
By Shireen Mukadam
May 05, 2014

"The Central African Republic stands on the brink of genocide; some would say it has already commenced," said Archbishop Desmond Tutu in April.

He warned that over the past year, the country's struggles for power and control over its resources, predominantly diamonds, had "degenerated into anarchy, hatred and ethnic cleansing."

The minority Muslim population have increasingly been targeted by Christian militias since the forced resignation of Michel Djotodia, the country's first Muslim president, in January. Tens of thousands of Muslims have been forced to flee their homes, into neighbouring Cameroon and Chad.

The United Nations in December estimated 600,000 internally displaced people, and 80,000 refugees from the Central African Republic (CAR) fled to neighbouring states. By last month, Reuters reported that nearly one million people (one fifth of the country's population) were displaced- either internally or externally.

A genocide is happening in CAR, while the world's media for the most part seems oblivious. Exactly twenty years since the Rwandan genocide, there is a sense of déjà-vu. Except that in the case of CAR, the victims this time round are Muslims.

The conflict in CAR is not new. For decades, CAR has endured coup after coup, with illegitimate leaders assuming power. This has led to high levels of poverty, mismanagement, corruption and a weak state.

Tensions in the CAR escalated in December 2012 when Seleka, a loose coalition of several armed groups launched an armed offensive against the government of President Francois Bozize. But intervention from the Economic Community of Central African States (ECCAS), of which CAR is a member,

prevented Seleka from capturing the capital, Bangui. Government and Seleka leaders, together with civil society and political parties reached a power-sharing agreement in January 2013.

Weeks later, however, Seleka accused Bozize's government of reneging and launched a coup, this time capturing Bangui in March 2013. Djotodia, the leader of Seleka was sworn in as president of the transition. The International Crisis Group (ICG) reported that although Djotodia had officially dissolved Seleka in September, its "combatants continue to terrorize the country, carrying out arrests and executions, acts of torture, sexual violence and looting". Amnesty International confirmed that human rights abuses "with almost total impunity" escalated after Seleka came into power.

Seleka, according to ICG, "is carrying out a country-wide criminal operation that has no other motive than personal gain."

In retaliation, the outraged population formed a self-defence group called anti-balaka (anti-machete). This tit-for-tat strategy has resulted in a spiral towards anarchy.

Although the conflict is political, it has taken on religious tones. The Seleka combatants are perceived to be predominantly Muslim. In reality, neither are all local muslims members of Seleka and the heterogeneous rebel coalition contains high numbers of foreign combatants.

Amnesty International reports that there are large numbers of Chadian elements, and smaller numbers of Sudanese elements within Seleka, and that it is these elements that are primarily responsible for human rights violations. In addition, former violent criminals have also been absorbed into Seleka. While Seleka consisted of 5,000 fighters when they overthrew Bozize in March 2013, the group expanded to 20,000 members by May 2013.

Because Seleka are perceived to be Muslim, anti-balaka militia, mostly Christian, are targeting the local Muslims, in retaliation for the actions of Seleka.

Bemba's Former Lawyer Wants ICC Judge Off Evidence Tampering Case

International Justice Monitor
By Wairagala Wakabi
May 13, 2014

Aimé Kilolo-Musamba, a lawyer who previously represented Jean-Pierre Bemba at the International Criminal Court (ICC), is seeking the disqualification of the pre-trial judge handling his case of alleged evidence tampering.

In a May 1, 2014 request to the presidency of the court, Mr. Kilolo's lawyers alleged that Judge Cuno Tarfusser had issued "unorthodox and legally unsubstantiated judicial mandates" that overwhelmingly favored the Office of the Prosecutor, rendering the judge "a Second Prosecutor."

Ghislain Mabanga, who is representing Mr. Kilolo, also pointed to the judge's alleged haste in issuing the arrest warrant for his client and four co-accused. He accused the judge of actions and language "manifestly contravening the presumption of innocence and instead implying guilt."

Mr. Mabanga said Judge Tarfusser "personally" involved himself in the investigation of the suspects, including the "unilateral" appointment of an independent counsel, interference with the scope and methodology of investigation by the prosecution and the independent counsel, and personal application to the court's presidency for a waiver of Mr. Kilolo's immunity.

For these reasons, said the defense lawyer, Judge Tarfusser could no longer be deemed wholly impartial and must be disqualified from all future proceedings in the case.

Charges of evidence tampering were brought last November against Mr. Bemba and his then lawyers Mr. Kilolo and Jean-Jacques Mangenda Kabongo. Similar charges were brought against two other former aides to Mr. Bemba, a former vice president of the Democratic Republic of Congo.

Investigators tapped phone calls and intercepted emails between Mr. Bemba and his lawyers. An independent counsel was then appointed to review telephone logs and listen to the tapped recordings.

Mr. Mabanga argued that the Rome Statute, the court's founding statute, does not envisage the appointment of an external independent counsel to facilitate an internal court investigation. He said powers of investigation are only invested in the prosecution.

He stated that after appointing the independent counsel, the judge "explicitly" instructed him on how to execute his mandate, "specifically" tasking him with finding incriminating evidence only. "The Single Judge did not require Independent Counsel to look for exculpatory evidence, a requirement imposed even on the Prosecution," claimed Mr. Mabanga.

The defense lawyer also submitted that the speed within which the judge issued the arrest warrant and the application to waiver Mr. Kilolo's immunity was "absolutely astounding and suggests a gross miscarriage of justice."

According to Mr. Mabanga, the prosecution's application for an arrest warrant was presented to the judge on November 19, 2013, numbering 50 pages and accompanied by 55 annexes totalling more than 1,500 pages. The annexes comprised up to 30,000 pieces of information and more than 18,000 records of phone calls and text messages.

Upon receipt of the application for an arrest warrant and within "mere hours," the single judge is said to have urgently applied to the presidency of the court for a waiver of Mr. Kilolo's immunity in order to grant the prosecutor's request. The lawyer said the judge's application for waiver was accompanied by a draft arrest warrant.

Based on two reports by the independent counsel – submitted in October and November last year – Judge Tarfusser issued arrest warrants for the five suspects. The arrest warrant stated that Mr. Bemba ran a "criminal scheme" from his detention cell in The Hague by speaking to witnesses and authorizing payments in exchange for false evidence in his ongoing trial.

"That the Single Judge was able to receive, review, analyze, deliberate, and decide upon the immediate deprivation of the suspects' liberty in a matter of hours is flabbergasting," said Mr. Mabanga. He added that even with the aid of an extremely efficient team, it would have been impossible to review all the material in less than 48 hours.

He argued that upon receipt of the application for an arrest warrant, the judge should have ordered the prosecutor to first apply to the presidency for an immunity waiver: "That the Single Judge himself made the waiver application is not simply unorthodox but is legally unfounded."

The judge was also accused of "often" referring to Mr. Kilolo's actual commission of crimes as opposed to alleged commission of offences. Among the references highlighted are Mr. Kilolo playing a "determinant role" in the purported evidence tampering scheme and the statement judge's decision denying him provisional release that "Mr. Kilolo has been found guilty in the court of public and judicial opinion."

Democratic Republic of the Congo

Official Website of the International Criminal Court
ICC Public Documents - Situation in the Democratic Republic of the Congo

ICC Appeals Chamber to Hold Hearings in the Lubanga Case on 19-20 May 2014

ICC
May 1, 2014

The Appeals Chamber of the International Criminal Court (ICC) will hold a hearing on 19 and 20 May 2014 in the case The Prosecutor v. Thomas Lubanga Dyilo. The hearing will be held to allow the parties and participants to orally address the Appeals Chamber on different relevant issues arising in the appeals. At the hearing, the Judges will also hear the testimony of two additional witnesses, witnesses D-0040 and D-0041, as requested by the Defense.

This public hearing will start at 09:30 (The Hague local time) and will be held in the presence of Thomas Lubanga Dyilo, his Defence Counsel, the Prosecution and the Legal Representatives of the Victims. Mr. Lubanga Dyilo may address the Appeals Chamber at the closure of the hearing.

Background: Trial Chamber I rendered a conviction decision in the Lubanga case on 14 March 2012. It was subsequently appealed by the Defence. The decision sentencing Mr. Lubanga to 14 years imprisonment was rendered on 10 July 2012 and was subsequently appealed by the Defence and the Office

of the Prosecutor. Following the two-day hearing, the Judges will make their decision on the appeals in due course.

Lubanga Appeals Witnesses to Testify on May 19 and 20

International Justice Monitor
By Wairagala Wakabi
May 2, 2014

The hearing of the testimony of "Witness D-0040" and "Witness D-0041" in support of Thomas Lubanga's appeals at the International Criminal Court (ICC) has been rescheduled to take place on May 19 and 20, 2014.

During the hearings, the two individuals who are expected to testify via video link from an undisclosed location will be questioned by Mr. Lubanga's lawyers first, followed by the prosecutor. Thereafter, appeals judges will put questions to the witnesses and the defense will have the opportunity to conduct redirect examination.

The hearing is also expected to serve as an opportunity for parties and participants to make oral submissions and observations before appeals judges. Before the closure of the hearing, Mr. Lubanga is expected to address the chamber.

In 2012, judges found Mr. Lubanga guilty of recruiting and conscripting children under the age of 15 and actively using them in an armed conflict in the Ituri region of the Democratic Republic of the Congo during 2002 and 2003. Mr. Lubanga was sentenced to 14 years imprisonment, but he was only expected to serve eight years because, at the time of sentencing, he had been in the court's custody for about six years.

Mr. Lubanga has appealed against both the conviction and the sentence. He was granted permission to call two witnesses as part of his appeals. They were initially expected to testify on April 14 and 15. However, due to undisclosed logistical challenges, the hearing was postponed.

In the April 30, 2014 rescheduling order, appeals judges rejected an application by legal representatives of victims to question the two witnesses. Judges considered that their request did not identify any personal interests of the victims they represent. However, should an issue affecting the personal interests of participating victims arise during specific parts of the testimony by the two witnesses, the victims' lawyers may make an oral request to question the witnesses.

Regarding the conduct of questioning of the witnesses, the defense was directed not to use leading questions for "contentious topics" and to "confine" its questioning to the issues for which Mr. Lubanga sought to admit the evidence of the witnesses on appeal. Meanwhile, prosecutors may only examine the witnesses on matters related to their testimony and its reliability, as well as on the credibility of the witnesses and other relevant matters.

In their order, judges also ruled that parties should notify the chamber of the material they intend to use during the questioning of the witnesses, in advance of the hearing.

Katanga Case: Sentence to be Delivered on 23 May 2014

ICC
May 6, 2014

Today, 6 May 2014, Trial Chamber II of the International Criminal Court (ICC) announced that it will deliver the sentence in the case The Prosecutor v. Germain Katanga on 23 May 2013 at 09:30 (The Hague local time) during a public hearing at the seat of the Court in The Hague (Netherlands). This date was announced at a hearing held on 5-6 May 2014 during which the parties and participants to the trial presented their submissions relevant to the sentence to be imposed on Germain Katanga before the ICC judges.

According to the Court's legal texts, the judges may impose a sentence of imprisonment to which they could add a fine or forfeiture of proceeds, property and assets derived directly or indirectly from the crimes. A sentence cannot exceed a maximum of 30 years, except when justified by the extreme gravity of the crime and the individual circumstances of the convicted person, in which case, a sentence of life imprisonment may be imposed. The number of years a person has previously spent in detention by the Court will be deducted from the sentence imposed by the judges.

Background: Germain Katanga was transferred to The Hague on 17 October 2007 and his trial started on 24 November 2009. On 7 March 2014, Trial Chamber II convicted Germain Katanga, as an accessory, of one count of crimes against humanity and four counts of war crimes committed during the attack on the village of Bogoro, Ituri (the Democratic Republic of the Congo), on 24 February 2003. The Chamber acquitted Germain Katanga of the other charges that he was facing. The Prosecutor and the Defence have appealed the Judgment. Decisions on the victim reparations will be rendered at a later stage, in due course.

Prosecution Seeks 22 – 25 Years for Katanga

International Justice Monitor
By Jennifer Easterday
May 6, 2014

This week, Trial Chamber II at the International Criminal Court (ICC) heard arguments about an appropriate sentence following Germain Katanga's conviction for war crimes and crimes against humanity in March. Three witnesses were called, and the parties and legal representative for victims presented their arguments.

The judges will issue the sentence on May 23, 2014 at 9:30 a.m. Katanga is the former leader of an armed militia that became known as the Force de Résistance Patriotique en Ituri (FRPI, Patriotic Resistance Forces in Ituri). He was charged with war crimes and crimes against humanity committed during

a February 2003 attack on Bogoro in the Ituri region of the Democratic Republic of the Congo (DRC).

The attack targeted a rival militia, the Union of Congolese Patriotics (UPC), as well as the predominantly Hema civilian population living in Bogoro. Ngiti soldiers—some of them children—descended on the village while most villagers were still sleeping. They proceeded to kill, rape, burn, and pillage, the chamber found.

Witness Testimony A prosecution witness, the Chef de Groupment of Bogoro, testified that the community of Bogoro continues to suffer from the attack. The witness noted the presence of orphans who cannot attend school, physically handicapped people in the community, and people who are still traumatized from the attack. Some victims continue to live in physical pain from shrapnel that is still in their bodies, he said. The witness also testified that some of the infrastructure that was destroyed, including secondary schools, has not been rebuilt. This witness also testified that Hema and Ngiti are now living together in harmony in Bogoro.

The defense also called two witnesses. These witnesses testified about Katanga's role in the peace process. The first witness testified that Katanga had helped with the demobilization process. Katanga took part in demobilization meetings and encouraged other combatants—including Hema soldiers—to demobilize in Aveba, Katanga's village. Another witness described how Katanga assisted in efforts to free employees from an NGO who had been arrested and detained by a militia in Aveba. The witness, who met Katanga during meetings organized by the Commission for Peace in Ituri, told the judges that Katanga wanted Ituri to remain united and wanted all ethnicities, including Ngiti and Hema, to live together in peace.

Aggravating Circumstances The prosecution requested a total sentence ranging from 22 to 25 years. The Prosecutor argued that the sentence needs to provide justice to the victims in Bogoro and serve as an effective deterrent for others.

The prosecution noted that the attack started in the early hours of the morning and targeted the civilian population, who were sleeping. The civilians were attacked with machetes and firearms, the prosecution said. The civilians were attacked and killed without distinction, the prosecution contended.

Katanga's intervention made it possible for the militias to have the supplies they needed to successfully attack Bogoro, the prosecution argued. According to the prosecution, the manner of the attack meant that the civilians were bound to flee and leave their possessions. Without the strategy Katanga developed and without his provision of arms and ammunition, the Ngiti combatants would not have been able to successfully attack Bogoro, the prosecution argued.

The prosecution submitted the following aggravating circumstances: Abuse of power or official capacity: Katanga abused his power as the leader of the FRPI, the prosecution argued. In his capacity as a leader in Aveba, he

received and distributed the weapons used in the attack. Beyond that, the prosecution submitted, his other actions in his capacity as a leader were carried out with the intent to wipe out the Hema.

Defenselessness of victims: The prosecution noted the particular defenselessness of the victims, which included women, babies, and the elderly.

Particular cruelty of the crimes: The prosecution argued that the particularly cruel nature of the crimes should be an aggravating factor. The prosecution pointed to the attackers encouraging the victims to come out of hiding before killing them as one example.

Discrimination: The discrimination against the Hema should be considered an aggravating factor, the prosecution argued. The prosecution submitted that when discrimination is the basis of an action, it can impose a particular cruelty on the victims.

These factors should be considered by the judges as reasons to impose a more severe sentence on Katanga, the prosecution submitted.

The legal representative for victims made similar claims. He focused on the harm suffered by the entire community of Bogoro, which he said used to be a major commercial center that was thrown into poverty as a result of the attack. The legal representative for victims focused on three aggravating circumstances also raised by the prosecution: the vulnerability of the victims; the cruelty of the crimes; and the ethnic discrimination against the Hema.

Mitigating Circumstances According to the defense, there are extensive mitigating factors that the chamber should rely upon in order to substantially reduce Katanga's sentence. The defense focused on the fact that the chamber found Katanga guilty as an accessory to the crimes and found that he did not directly intend for the crimes to be committed. According to the defense, the finding of Katanga's accessory role is very different from the theory of the case advanced by the prosecution during the trial (that Katanga was the mastermind behind the attack and participated in it himself). Being convicted as an accessory warrants a far less severe sentence than conviction as a principle, the defense argued. Indeed, the defense suggested, if the facts of the case had been known previously, it is unlikely the prosecution would have opened a case against Katanga.

The defense also argued that the judges should take into account the broader circumstances Katanga faced at the time. The defense focused on his relatively young age at the time of the attack, 24 years-old, and the ongoing conflict and need to protect his community from attacks.

Katanga's active and sincere role in the peace process was also noted by the defense as a mitigating factor. The defense credited Katanga with the success of demobilization in Walendu-Bindi. The defense also highlighted witness testimony about the decency with which Katanga treated the local population.

The defense discussed the burden of the lengthy trial on Katanga and his family. The defense told the judges that Katanga supports a family of six children (three adopted, three biological), as well as his wife.

The time Katanga has spent in detention should be discounted from the sentence, the defense argued. This should include the two-and-a-half years he spent in detention in the DRC, on what the defense claims are spurious, but related, charges. Combined with the six-and-a-half years he spent in the ICC detention center, the defense argued, means he should have nine years reduced from his sentence.

Katanga also addressed the bench. He claimed that in providing arms and ammunition to the Ngiti militia, he had been helping the DRC "head of state" protect the population and physical integrity of the DRC.

"Who was I to keep the head of state from doing his duty to the country? We all know that he had a right to protect the safety of the population and the integrity of the state. […] If the majority found me guilty of being an accomplice, what is the prosecutor waiting for to bring the main perpetrator to justice?" Katanga stated.

Katanga also directly addressed the victims of the attack. He said he knows the pain endured by those that lost family members and friends and offered them his compassion.

"To the victims betrayed by those who we assisted in the past and who became their executioners: I think of them day and night," Katanga concluded.

Prosecutor Suggests Limits to Lubanga's Address to Appeals Judges

International Justice Monitor
By Wairagala Wakabi
May 12, 2014

International Criminal Court (ICC) prosecutor Fatou Bensouda has asked judges to restrict the issues that Thomas Lubanga may speak about when he addresses the court at the closure of his appeals process.

Mr. Lubanga, who was convicted in March 2012 over the use of child soldiers, is scheduled to address the court on May 20 at the conclusion of the appeals hearing on his conviction and 14-year jail sentence. In the order scheduling the appeals hearing, judges did not specify the exact nature of Mr. Lubanga's oral statement before the chamber.

However, in a May 2 submission, the prosecutor suggests that Mr. Lubanga's personal address should not "stray" into areas that would ordinarily fall within the role of his defense lawyers. She said Mr. Lubanga should not speak about his conviction, his sentence, or the issues on appeal.

"In the event that he were to do so, the prosecution respectfully requests that it be allowed the opportunity to respond on any such matters he raises, to the extent they have not been fully responded to already during the course of the hearing," said Ms. Bensouda.

The prosecutor suggested that the appeals chamber adopts an approach similar to that of the trial chamber, which allowed Mr. Lubanga to make an unsworn oral statement at the end of his trial but barred him from raising any "significant consequential matters."

Mr. Lubanga, who has been in court's custody since March 2006, did not testify in his own defense. However, at his sentencing hearing he made a statement in which he denied the charges against him.

He said his role in the armed conflict in Congo's Ituri province during 2002 and 2003 was that of a peacemaker not a warmonger. "I never could have stooped to such a low level to commit an act which is contrary to all values that are dear to me," said Mr. Lubanga.

Trial judges convicted Mr. Lubanga over the conscription, enlistment, and use of children under 15 years in armed conflict while he served as president of the Union of Congolese Patriots (UPC).

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Kenya

Official Website of the International Criminal Court
ICC Public Documents - Situation in the Republic of Kenya

Court to Hear Entire Testimony of Witness 673 in Private Session
International Justice Monitor
By Tom Maliti
May 14, 2014

Trial judges of the International Criminal Court (ICC) have decided to hear the entire testimony of the seventeenth prosecution witness in private session. The witness, who goes by the pseudonym "Witness 673," is testifying in the trial of Kenyan Deputy President William Samoei Ruto and former journalist Joshua arap Sang.

Presiding Judge Chile Eboe-Osuji said on Wednesday that Trial Chamber V(a) had granted the prosecution's request for Witness 673 to testify in private session.

The trial of Ruto and Sang resumed on Wednesday after one month break. Ruto was present in court as required by an order of Trial Chamber V(a). The trial chamber has allowed Ruto to be absent from most of his trial, except when the court reopens after a recess. The court was on Easter recess last month, and Ruto is expected to be present in court for five days.

Before the break, the last witness to testify was Lars Bromley, an expert who presented to the court and analysis of satellite images taken in January 2008 during the violence that nearly tore apart Kenya after the December 2007 presidential poll. Ruto and Sang are on trial facing three counts of crimes against humanity for their alleged roles in that violence.

Bromley completed his testimony on April 10. He is the Principal Analyst for a program of the United Nations Institute for Training and Research called Operational Satellite Applications Program, or UNOSAT.

Who are the Eight Witnesses Unwilling to Testify in the Trial of Ruto and Sang? – Part 1

International Justice Monitor

By Tom Maliti

May 8, 2014

This is the first part of a three-part article on the witnesses the International Criminal Court (ICC) prosecution is seeking to be compelled to testify in the trial of Kenyan Deputy President William Samoei Ruto and former radio journalist Joshua arap Sang. This part looks at who the witnesses are and what they were expected to testify about.

International Criminal Court Prosecutor Fatou Bensouda has said that the eight prosecution witnesses unwilling to testify in the trial of Deputy President William Samoei Ruto and former journalist Joshua arap Sang are insider witnesses. This is ICC-speak for witnesses who make allegations that link an accused person to the crimes they are alleged to have committed.

Insider witnesses are typically expected to testify about meetings they attended where the accused allegedly participated in the planning of crimes. They may also give details about how the accused was allegedly involved in organizing those who will commit the crimes and about the accused allegedly raising money to fund the commission of those crimes. The witnesses may also be people who participated in committing the crimes.

The witnesses in question are known to the public by their pseudonyms only. They are: Witness 15, Witness 16, Witness 323, Witness 336, Witness 397, Witness 495, Witness 516, and Witness 524.

In a January 9, 2013 submission to the court, Bensouda said she expected to call a total of 46 witnesses. These eight witnesses pulling out reduced that witness pool to 38. To date 16 witnesses have testified in the trial of Ruto and Sang. Two of them have been expert witnesses, but most of the witnesses have been crime-based witnesses. This is a term used to describe witnesses who narrate to the court what they know about the crimes an accused person is charged with, but they do not make any direct allegations against the accused.

Under ICC rules and at the direction of trial judges, the Office of the Prosecutor was required to reveal the witnesses' identities months before the trial of Ruto and Sang was to begin. In this particular case, the then Trial

Chamber V had directed that the prosecution make all disclosures by January 9, 2013. This was in anticipation of the trial starting in April 2013, before it was eventually postponed to September.

The judges did make an exception to the January 9, 2013 deadline. They said the prosecution could apply and be allowed to disclose the identities of witnesses under the ICC's protection closer to the trial date or when they are expected to testify. Until such full disclosures, the defense would receive redacted statements of those particular witnesses.

In the case of seven witnesses, Bensouda stated in a December 5, 2013 application that the prosecution disclosed to the Ruto and Sang legal teams the identities of the witnesses between February and April 2013. (The prosecution filed a supplementary application on February 20, 2014 asking the judges to compel an eighth witness to testify.) Typically, the disclosures to defense lawyers would include the witnesses' statements and related evidence.

In a separate submission, Bensouda notified the trial judges that Witness 15, Witness 16, and Witness 323, may make self-incriminating statements if they testified. Bensouda anticipated in her July 3, 2013 submission that a total of seven witnesses would fall under the self-incrimination provisions of the Rome Statute. To date only one of those witnesses has testified. This is Witness 356 who testified for seven days, starting on January 20. Witness 356 had a lawyer present during his testimony, the first witness to take such a precaution.

In the December 5, 2013 application Bensouda gave some details about what Witness 15 and Witness 16 had been expected to tell the court before they stopped cooperating with the Office of the Prosecutor and the court's Victims and Witnesses Unit (VWU). The public version of the December 5, 2013 application is redacted, leaving it with information gaps.

Witness 15 was going to testify about 11 meetings he claimed Ruto was present at and participated in. He was expected to testify that during those 11 meetings participants allegedly discussed how to get firearms and who would be the field commanders. The participants also discussed finances and logistics, according to the sketch of what Witness 15 was expected to testify on.

Witness 15 was also expected to describe what the prosecution has framed as "The Network." This is the group the prosecution alleges Ruto led and was responsible for the attacks that occurred in the North Rift region in January 2008. The witness was going to testify about an attack he claimed he participated in in Yamumbi, which is in the greater Eldoret area, and had been expected to give details about attacks on Turbo and Kiambaa, also in the greater Eldoret area. Witness 15 was also expected to testify how Sang's show on Kass FM and other programs on the radio station were used to support and incite violence.

Witness 16 is the only other witness whose expected testimony has been described in Bensouda's December 5, 2013 application. In statements to the

prosecution, Witness 16 claimed he was present at two meetings that Ruto participated in. The witness was expected to testify that one meeting took place in public on October 15, 2007 at Kaptabee where the witness alleged that Ruto said Kikuyus should be killed and evicted from the Rift Valley region. Witness 16 was also expected to testify about a meeting he alleged took place at Ruto's home in Sugoi during which close-to-final preparations allegedly had been made to mobilize and arm Kalenjin youths to evict Kikuyus from the Rift Valley region.

Witness 16 was also going to testify about his participation in and provide direct evidence of the attack on Turbo. He had been expected to give evidence against Sang and describe how he used his show on Kass FM to support the violence.

Bensouda said in her December 5, 2013 application that both Witness 15 and Witness 16 ceased any contact with the Office of the Prosecutor some time last year. In the case of Witness 15, he recanted three times his previous statements to the prosecution. This was between February and March 2013.

Witness 15 recanted his evidence in two affidavits prepared by Paul Gicheru, a lawyer based in Eldoret. In the affidavits he accused the prosecution of bribery and witness coaching. Each time the prosecution received an affidavit from Witness 15, they would contact him, and he would disown the affidavits, claiming he had been forced to sign them. Witness 15 told the prosecution that in one case he had been kidnapped and forced at gunpoint to sign the affidavit. In a January 8 submission, Ruto's lawyer, Karim Khan, said that this account is completely false. The details of how Khan knows this are redacted.

According to Bensouda, Witness 15 had been in the ICC Protection Program until November 2011. The witness remained outside Kenya until he returned on October 26, 2012.

In a March 5 joint submission, the lawyers for Ruto and Sang questioned whether it was advisable to compel Witness 15 to testify in his state of mind.

"In addition, it is known that P-0015 has emotional and behavioural difficulties. Indeed, he appears to have recanted on at least 3 different occasions," the lawyers wrote.

"Given this background, combined with recent developments described in the Request [the December 5, 2013 application], it is submitted that this witness' reliability and credibility is irrevocably compromised and he cannot be held out in good faith as a witness of truth," the lawyers for Ruto and Sang wrote.

Witness 16 returned to Kenya on July 15, 2013 to renew his Kenyan travel documents and disappeared on July 29 without informing the prosecution, Bensouda said in her December 5, 2013 application. Twice in August the prosecution contacted Witness 16, who each time refused to confirm his continued cooperation with the Office of the Prosecutor. According to Bensouda, Witness 16 never formerly withdrew from the case or recanted his statements to her office. The witness told the prosecution he was remaining

in Kenya for the sake of his children and was dissatisfied with the court. Bensouda also stated in her application that Witness 16 was offered five million Kenyan shillings to recant his testimony sometime in July when he returned to Kenya. The details of how Bensouda knew about this bribe offer are redacted.

All eight witnesses that the prosecution want to be forced to testify before Trial Chamber V(a) were either in the ICC Protection Program managed by the VWU or the Office of the Prosecutor's own protection program. All of them told the Office of the Prosecutor that they would no longer be testifying between March and August last year, just before the trial of Ruto and Sang began in September.

Bensouda in her December 5, 2013 application said this pull-out by the eight witnesses happened after the prosecution revealed the identities of the eight witnesses to defense lawyers, which were made between February and April last year. However, Bensouda did not explicitly or implicitly state that the defense teams of Ruto or Sang were involved in the witnesses' withdrawals.

In response to Bensouda's assertions, Ruto's lead lawyer, Karim Khan, wrote in his January 8 submission that, "the Defence denies any such suggestions," that it is linked to the witness withdrawals.

Who are the Eight Witnesses Unwilling to Testify in the Trial of Ruto and Sang? – Part 2

International Justice Monitor
By Tom Maliti
May 9, 2014

This is the second part of a three-part article on the witnesses the International Criminal Court (ICC) prosecution is seeking to be compelled to testify in the trial of Kenyan Deputy President William Samoei Ruto and former radio journalist Joshua arap Sang. This part looks at the circumstances surrounding the withdrawal of the witnesses from the prosecution case.

Some of the witnesses simply cut off all communication with the Office of the Prosecutor. Others recanted their testimony. Others yet had Kenyan lawyers notify the prosecution they are withdrawing from the case.

These witnesses have had to deal with all sorts of pressures from being away from home to being offered bribes to being threatened. In the case of one witness, someone they know threatened to commit suicide if they went ahead and testified. Then there are the calls and meetings with prosecution staff who wanted to know why they were withdrawing and whether they would reconsider their decision.

The details of how Witness 15 and Witness 16 withdrew have already been given in first part of this article. The circumstances of the withdrawal of Witness 323 are unclear. This is because Witness 323 was not included in the prosecution's December 5, 2013 application.

The prosecution filed a supplementary application on February 20, 2014 asking the judges to add Witness 323 among the witnesses it wanted Trial Chamber V(a) to issue summons to. The prosecution's February 20 supplementary application and its six annexes were filed as confidential, meaning they are not available to the public. The judges referred to the supplementary application in their decision, which is publicly available, as did the defense lawyers in their public, redacted submissions.

Witness 336 was provisionally admitted into the ICC Protection Program around the same time his identity was disclosed to the defense, according to the December 5, 2013 application made by ICC Prosecutor Fatou Bensouda. The disclosure was made on February 11, 2013, and in early August Witness 336 broke off contact with the ICC's Victims and Witnesses Unit and the prosecution. Later that month, the witness contacted the prosecution through another witness and said he wanted to discuss the pressure that was being exerted on his family. This was on August 28, 2013. The following day the prosecution called the witness, who agreed to a meeting and agreed to make arrangements the next day. Prosecution staff was unable to contact Witness 336 on August 30, but on the same day, Witness 336's wife called someone who later received a text message from her saying, "bye bye … for ever." The name of the person Witness 336's wife contacted is concealed in the public version of the December 5, 2013 application.

The prosecution alleges that Witness 336 was offered a two million shillings bribe on August 28 and accepted it sometime before September 2. The source of the prosecution's allegation is redacted in the public version of the December 5, 2013 application. The prosecution also alleges that Witness 336 encouraged the person he is alleged to have confided in to also take a bribe.

The prosecution has made bribery allegations against three witnesses in the December 5, 2013 application. These are Witness 16, Witness 336, and Witness 516. Only Witness 336 is also involved in the separate case the prosecution has initiated against former prosecution intermediary and journalist Walter Osapiri Barasa.

It seems that the allegation of the August 28 bribe offer made to Witness 336 is separate from the Barasa case because it took place more than three weeks after the arrest warrant for Barasa was issued under seal. The arrest warrant, which was opened in October 2013, stated that the prosecution alleges Barasa offered Witness 336 between one million shillings and 1.5 million shillings to withdraw as witness. This alleged offer was made sometime between May 20, 2013 and July 21, 2013 at or near Kampala, the capital of Uganda.

The multiple bribery allegations in the prosecution's December 5, 2013 application may explain why Sang's lawyer, Joseph Kipchumba Kigen-Katwa said the prosecution is avoiding filing another bribery case and instead tagging it with the request for summons.

"The Defence submits that in reality, this Request [the December 5, 2013 application] for summons is a back-door attempt by the prosecution to bring Article 70 allegations against the accused or others into the main trial. This is

unacceptable," Kigen-Katwa wrote in his January 10 submission in response to the prosecution's request for summons.

Article 70 is the provision in the Rome Statute that covers offences such as a witness giving false testimony, allegations of bribery, or intimidation of a witness or threats made against a court official.

There is another connection between the witnesses the prosecution wants compelled to testify before Trial Chamber V(a) and the case against Barasa. When the arrest warrant against Barasa was made public, he went to the Kenyan High Court to challenge it. That case is ongoing. However, Witness 15, Witness 16, and Witness 336 are reported to have signed affidavits in support of Barasa's case, Bensouda said in the December 5, 2013 application.

Through a Kenyan law firm, J. N. Njuguna and Company, Witness 397 informed the prosecution in an affidavit he signed that he wished to withdraw as a witness. Witness 397, however, did not recant his statement to the prosecution. The prosecution received this correspondence and affidavit on May 10, 2013. This is almost two months after the prosecution disclosed to the defense the identity of Witness 397, according to the December 5, 2013 application. That disclosure was made on February 18, 2013 and around the same time the prosecution said they relocated Witness 397 to an unnamed location.

After receiving the affidavit, the prosecution contacted Witness 397 several times to find out why he had withdrawn as a witness. During these conversations, the prosecution said Witness 397 assured them that he would still cooperate with them despite the affidavit he had signed. The prosecution arranged several face-to-face meetings, but the witness did not show up. The last time the prosecution spoke to Witness 397 was August 2, 2013. After that his phone was switched off.

The prosecution said that Witness 397's status as an ICC witness was well-known in the Rift Valley region, and he was being pressured to cease cooperating with the court.

As for Witness 495, the prosecution said they remained in touch with him until September 2013 when they met the witness to help him get a visa so that he could testify in The Hague. The prosecution revealed the identity of Witness 495 to the defense on March 13, 2013. The section on Witness 495 in the December 5, 2013 application is short and heavily redacted, so there is not much detail. Witness 495 checked out of a hotel he had been booked in, and the prosecution has not been able to reach him since. Details of where Witness 495 had been located or the date he checked out have been redacted.

The prosecution said Witness 516 failed to attend a July 6, 2013 meeting and ceased to communicate with court officials after that. The identity of Witness 516 was disclosed to the defense on February 18, 2013. The witness did not leave Kenya, but his family had been relocated in December 2012. The section on Witness 516 makes reference to a first payment of 100,000

shillings. Part of the sentence is redacted, so it is unclear whether the prosecution is alleging Witness 516 received a bribe or was involved in bribing someone else.

The prosecution also said the status of Witness 516 as an ICC witness was well-known in the Rift Valley, and he was being pressured not to cooperate with the court. Witness 516 has remained out of touch since July 2013, but the prosecution said they have not received an affidavit from him confirming that he has withdrawn as an ICC witness.

Witness 524 was threatened either directly or indirectly on April 18, 2013. It is unclear because part of the sentence describing the threat is redacted. The threat, however, occurred a day after the prosecution disclosed Witness 524's identity to the defense. After that threat he was pressured to cease being an ICC witness. The information about who pressured him to withdraw is redacted in the public version of the December 5, 2013 application. Someone whose name is also redacted threatened on July 26, 2013 to disown Witness 524 and commit suicide if he did not withdraw being an ICC witness.

On August 1, 2013, Witness 524 sent an email to which he attached a letter that stated he was formally withdrawing as a prosecution witness. On August 31, 2013, the Office of the Prosecutor received an email and attachments from Arap Mitei and Company Advocates that included an affidavit reconfirming Witness 524's withdrawal as a witness and the reasons for doing so.

Who are the Eight Witnesses Unwilling to Testify in the Trial of Ruto and Sang? – Part 3

International Justice Monitor
By Tom Maliti
May 12, 2014

This is the third part of a three-part article on the witnesses the International Criminal Court (ICC) prosecution is seeking to be compelled to testify in the trial of Kenyan Deputy President William Samoei Ruto and former radio journalist Joshua arap Sang. This final part looks at if the witnesses were to testify whether such testimony would advance the prosecution's case.

Before the eight witnesses withdrew, Karim Khan, Ruto's lead defense lawyer, asked the court to order three of them to testify at the start of the trial. Khan's application was supported by Sang's lawyer, Joseph Kipchumba Kigen-Katwa. Khan wanted Witness 15, Witness 16, and Witness 336 to be part of a group of eight witnesses he considered important to start the trial with, arguing in a July 19, 2013 submission that the integrity of the proceedings would be protected if this order of witnesses was followed.

"To use a Kenyan colloquialism, based on witness statements and documents, the Defence has substantial grounds to believe that these eight key prosecution witnesses have been part of a deliberate and concerted scheme to "cook" evidence against Mr. Ruto," Khan wrote.

Now that the witnesses no longer wish to testify why does the prosecution bother with them?

ICC Prosecutor Fatou Bensouda argued in her December 5, 2013 application that justice would be served by the witnesses being compelled to testify.

"The Chamber should hear the evidence of these witnesses in order to determine the truth, not simply about the charged crimes, but also concerning the allegations by both Defence teams of a concerted and elaborate conspiracy at play in this case to fabricate evidence and implicate the Accused," Bensouda wrote.

"Certain of these witnesses have subsequently recanted the evidence given to the Prosecution and accused the Prosecution of irregularities in its interactions with them. It is thus particularly important to secure the attendance of these witnesses to explore the veracity of their conflicting statements," Bensouda elaborated.

Kigen-Katwa disagreed with the prosecutor. He was surprised that the prosecution had chosen to take different approaches towards recanting or withdrawing witnesses in the two Kenya cases before the ICC. He observed that the prosecution withdrew witnesses from the case against President Uhuru Muigai Kenyatta who had either recanted or withdrawn their testimony even though such a move undermined the prosecution's own case.

"This approach, the Defence submits, is the appropriate one, and seems to be an admission on the part of the Prosecution that testimony which has been recanted, has limited probative value," Kigen-Katwa wrote in his January 10 submission.

Kigen-Katwa further argued that any testimony the eight witnesses may give would not be of value to the court.

"Evidence which has been disowned or changed multiple times and/or which is not procured voluntarily is hardly believable beyond reasonable doubt, and therefore does not materially assist the Prosecution's case, nor does it resolve any specific issues in the trial," Kigen-Katwa wrote.

Presiding Judge Chile Eboe-Osuji and Judge Robert Fremr stated in their majority decision ordering the witnesses to appear before the ICC that the defense was only speculating when stating the witnesses would be hostile to the prosecution.

"Regarding the potential hostility of the Eight Witnesses, until any witness has been given an opportunity to take the stand, take the oath and take questions in examination-in-chief, it would be speculative to declare the witness as hostile," said the two judges.

"Even then, there is no known wisdom that hostile witnesses are incapable of testifying to the truth under oath. The usual danger is that the calling party runs the risk of the witness in question testifying in a manner that is more

favourable to the opposing party, such that may not aid the case of the calling side. But that possibility is not without value in the search for the truth, especially in light of the provisions of article 54," the judges wrote.

Article 54 is the provision in the Rome Statute that details the prosecution's authority and powers to investigate crimes.

Judge Olga Herrera Carbuccia did not address this issue in her dissenting opinion even though she did say she agreed with Judges Eboe-Osuji and Fremr that the court had the power to summon unwilling witnesses.

The trial of Ruto and Sang is scheduled to resume on Wednesday, May 14.

Judge Disagrees that Kenyan Government Can Compel Unwilling Witnesses to Appear Before ICC

International Justice Monitor
By Tom Maliti
May 7, 2014

Judge Olga Herrera Carbuccia has disagreed with her fellow judges that the Kenyan government can compel eight unwilling prosecution witnesses to appear before the International Criminal Court (ICC) in the trial of Deputy President William Sameoi Ruto and former journalist Joshua arap Sang.

Judge Carbuccia said in her April 29 dissenting opinion that she, however, agreed with her fellow judges that Trial Chamber V(a) had the power to summon witnesses who are not willing to testify to appear before it. Presiding Judge Chile Eboe-Osuji and Judge Robert Fremr issued a majority decision on April 17 in which they stated that the ICC had the power to summon witnesses, and a State Party had a legal obligation to compel the witnesses concerned to appear before the court.

The question of whether the ICC can summon a witness who has declined to testify before it arose from an application Prosecutor Fatou Bensouda filed in December last year. Trial Chamber V(a) made its majority decision on the issue after receiving a further application on the matter from Bensouda and submissions from Kenya's Attorney General, the defense, and the lawyer for the victims.

Judge Carbuccia wrote in her 13-page dissenting opinion that only if a witness has voluntarily agreed to appear before the ICC does a State Party like Kenya have a legal obligation in ensuring they are able to attend court. She also said she disagreed with Judges Eboe-Osuji and Fremr's conclusion that although the Rome Statute that governs the ICC does not explicitly state the court can compel witnesses to appear before it, the power was implied in some of its provisions.

The judge also observed that the Rome Statute does not provide for any sanctions against anyone who refuses to testify despite being served with a court order requiring them to do so.

"Consequently, a fundamental element of subpoena powers is absent," Carbuccia wrote.

Following the publication of Judge Carbuccia's dissenting opinion, all parties have a right to apply to Trial Chamber V(a) for leave to appeal the decision if they wish. In an April 23 email, the judges notified the defense of Ruto and Sang that they had until this past Monday (May 5) to file such an application. They also gave the prosecution until May 9 to file a response if necessary.

Ruto's lawyers filed their application on May 5 as did Sang's legal team. They have relied heavily on Judge Carbuccia's dissenting opinion to argue why they should be allowed to appeal the majority decision.

Trial Chamber V(a) has also allowed the Kenyan government to make submissions on the issue by May 12. The judges said in a decision made on Friday that the Kenyan government could choose to file an application for leave to appeal or submit observations as an amicus curiae (friend of the court). The chamber made the decision in response to an application made by Attorney General Githu Muigai.

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Libya

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

International Criminal Court Says Libya Must Hand Over Moammar Gadhafi's Son
NDTV.com
May14, 2014

The Libyan government must surrender the son and onetime heir-apparent of slain dictator Moammar Gadhafi to the International Criminal Court despite its appeal of the handover and legal proceedings under way in Libya, the court's prosecutor said Tuesday.

Fatou Bensouda told the UN Security Council it was "a source of great concern" that Libya did not immediately hand over Seif al-Islam Gadhafi to the ICC as it was required to do following a ruling by pre-trial judges last year that he must be prosecuted at the tribunal in The Hague, Netherlands for crimes against humanity.

Libya has argued that Seif al-Islam should be prosecuted in his own country.

Last month he appeared at a trial in the capital, Tripoli, by video link from the city of Zintan, where he has been held by a militia since his capture in November 2011.

Bensouda told the council that "national judicial proceedings can never be an excuse for failure to comply" with an order from the ICC, even if the Libyan

government is appealing the tribunal's decision to try Seif al-Islam in The Hague and not at home.

While the ICC is insisting on prosecuting Gadhafi's son, it gave Libya a green light last October to prosecute former intelligence chief Abdullah al-Senoussi for crimes against humanity related to his alleged involvement in the deadly crackdown on Gadhafi opponents.

Al-Senoussi, who is detained by the government in Tripoli, has appealed the decision to be tried at home and not by the ICC.

Bensouda expressed concern at the slow pace of al-Senoussi's trial and urged the Libyan government to move ahead "without undue delay."

Libya's UN Ambassador Ibrahim Dabbashi made no mention of handing over Seif al-Islam.

He told the council that Libya's judicial authorities want the ICC to recognise their jurisdiction to try him - and to reiterate their jurisdiction over al-Senoussi.

On a related issue, Bensouda called on the government to get rid of illegal detention centers, saying they have no place in "modern Libya." She called reports of torture and mistreatment in these facilities "worrying."

"While the number of detainees requiring transfer to proper government-controlled detention facilities has reportedly dropped from 8,000 to 7,000, the process of transfer of prisoners to state-controlled detention centers has to be speeded up," she said.

Dabbashi said as part of efforts to improve the situation of detainees, the justice minister has conducted a census and determined that there are 6,186, including 646 who are serving sentences.

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Cote d'Ivoire (Ivory Coast)

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

Liberia: Court Acquits Five Grand Gedeans of Mercenarism in I/Coast
AllAfrica
By Kennedy L. Yangian
May 10, 2014

It has been a difficult three years for 18 citizens from South eastern Grand Gedeh County who have been languishing behind the prison cell facing trial for alleged mercenarism.

Freedom came ringing Friday as five of the 18 were ordered released from the Monrovia Central Prison while the fate of their colleagues still remains in the purview of the court.

The Criminal Court "D" at the Temple of Justice was a scene to watch Friday when five defendants accused of mercenarism in the Ivory Coast were acquitted due to lack of evidence to link them to the cross -border attack in that neighboring country.

The release of the five defendants, which sparked wide jubilations from family members and friends present in the court came as the result of a motion of acquittal filed on behalf of the defendants by the defense counsel who prayed the court to set seven of the defendants free because testimonies from the state witnesses did not link any of them.

In its motion of acquittal Defense Counsel Atty. Arthur Johnson argued that throughout the case none of the state witnesses ever linked the seven defendants of involvement in the cross border attack that took place in the Ivory Coast in 2010 and 2011 that resulted to the death of seven United Nations Peace Keepers from the African state of Niger.

"The court on the motion of a defendant or on its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses" said the Atty. Johnson.

In its counter argument the prosecution lawyer Cllr. Theophilus Gould told the court that the defendants were all culpable for the crime for which they are on trial however the court could release some of the defendants based on its own discretion.

However, in his ruling on Friday, Presiding Judge Emery Page stated that based upon the defense counsel's legal reliance coupled with the concession of the prosecution for the release of some of the defendants and realizing the soundness of said motion same was hereby granted for the release of defendants, Timothy Barlee, Fred Chelly, Christopher Laykpayee, Junior Gelor and Emmanuel Pewee.

Judge Emery Paye said further that he could not free the two other defendants Sam Tarlee and Prince Youtay also named in the motion of acquittal because after visiting the case file it was realized that the two defendants were linked to the crime for which they are facing trial.

"From the perusal of records by the court, it was observed that in the statements of defendant Ofori Diah he did linked Sam Tarley, also in the statement of defendant Emmanuel Saymah and the testimony of that of Pascal Kollie, defendant Prince Youtay was also linked "said Judge Paye.

Judge Paye ruling thereafter was greeted with jubilation from family members, friends and the defendants themselves who hugged family

members, friends as well as other defendants in the courtroom upon their release.

Like other defendants freed, Fred Chelly believed to be in his early 30s told FrontPageAfrica that he thanked the Almighty God for his release because according to him, he was totally innocent of the charges levied against him that led him to prison for the last three years.

"Upon my arrest I was doing dry goods business in Grand Gedeh County for living, my goods were all taken away by the police during my arrest with my money, now you have freed me because I am not guilty how do I go home to re-establish life?" asked Fred Chelly.

Grand Gedeh (District #3) Lawmaker Alex Grant, who greeted the release of his kinsmen with smile indicated that justice has been done to those that were accused falsely and had no knowledge of what they had been languishing behind bars for the last three years.

" What happened today is what we had earlier told the government to do by screening the defendants to determine who is actually linked, but this whole thing lies with our security because on most instances they don't investigate thouroughly", added Grant.

Representative Grant vows to prevail on the government to ensure that those freed are taken back home and re-settled, adding that all is not yet over and that the people of Grand Gedeh County are still following the case until all those arrested in connection with the alleged crime are given due process in accordance with law.

This is not the first time the Government of Liberia has failed to prove charges brought against citizens. It can be recalled that retire General Charles Julu, Andrew Dorbor and others are accused of treason, but following years of trial, the state could not prove its case leading to their acquittal.

In most of the treason cases, citizens of Grand Gedeh County have been in the highest number raising suspicion that President Ellen Johnson Sirleaf might be on a retribution since she is said to have been subjected to ill-treatment during her brief stay in detention by some members of the Armed Forces of Liberia, which was at the time dominated by former President Samuel Doe's kinsmen from Grand Gedeh County.

The remaining 13 are still undergoing court proceedings. In a criminal proceeding, the burden of proof lies with the accuser who has to prove beyond a reasonable doubt that the accused has committed an act. In such case, pieces of evidence have to be convincing to enable the Judge render a guilty verdict.

Ivoirian Refugees Return to Homelessness
AllAfrica
May 13, 2014

Tens of thousands of western Côte d'Ivoire residents who fled deadly election turmoil three years ago have returned home, where survival is a daily struggle as more than half of them remain homeless.

Voluntary repatriation by the UN Refugee Agency (UNHCR) has brought home 33,702 people from neighbouring Liberia since 2011. Around 400 have also returned from Guinea and an unknown number have come back on their own. The 2010-2011 post-election conflict forced some 220,000 people to flee western Côte d'Ivoire to Liberia.

UNHCR's deputy representative in Côte d'Ivoire, Serge Ruso, told IRIN that 52 percent of the former refugees have no houses. Violence ignited by the disputed outcome of the November 2010 presidential run-off first broke out in the country's west, where armed gangs supporting then opposition candidate and now President Alassane Ouattara raided villages, killed and drove out people seen as supporters of then incumbent leader Laurent Gbagbo.

Many of the former refugees restarting life at home without a roof over their heads have sought shelter with friends or relatives. Those whose land has not been illegally seized by their ethnic or political foes are slowly rebuilding, while the loss of both homes and farms to rivals has deepened desperation and longstanding rancour for others.

The government's Post-Crisis Assistance Programme (PAPC) says 2,243 houses need reconstruction or refurbishment in the crisis-riven west, and that it rebuilt or restored 687 houses in 2012 thanks to World Bank funding.

"Every night we go to bed very afraid because strong winds during the rainy season may blow away the straw roofs or crush our mud houses," said Georges Nonzi, now living in a small village near the western town of Duékoué

Land tenure disputes

Land has been at the centre of conflict in the region, and with the looming 2015 elections, lingering tensions over access to land could trigger violence.

Nonzi, 66, and his family survived the July 2012 attack on a camp outside Duékoué housing some 5,000 people who had been displaced by the 2010-2011 poll violence. The attack was seen as ethnically driven, as it was blamed on armed Malinké men backed by traditional hunters known as dozo who support Ouattara. The camp was home to mainly Guéré people who are Gbagbo sympathizers.

"Housing is quite critical, but there are underlying problems that should be urgently resolved," said a senior NGO official on condition of anonymity. "All those returning have nowhere to go. The land ownership problems still remain. Every returning refugee or displaced person is an additional land problem that needs resolving."

Land tenure in Côte d'Ivoire is either customary or statutory. Ninety-eight percent of land in rural Côte d'Ivoire is owned through customary law. The statutory system is applicable only when land is registered. The government in 1998 passed a rural land law aiming to recognize and formalize customary land rights by setting out procedures and conditions for them to be transformed into title deeds. But land ownership agreements are still predominantly verbal, a matter that has contributed to the recurrent disputes.

The land disputes add to political rivalries that often take on an ethnic dimension. Observers have criticized the government for failing to carry out far-reaching reconciliation and fair justice in the aftermath of the violent 2010-2011 election crisis. Côte d'Ivoire's west is seen as having borne the brunt of the country's years of crisis since the 1999 toppling of President Henri Konan Bédié.

Ivoirian political analyst Lamine Kourouma says the authorities now give attention to the western region only when there are armed raids, which have been most frequent in the west than any other region in the country since the tumultuous election.

"Today problems about land, community rehabilitation, improving infrastructure, development and reintegration of former fighters are a low priority," Kourouma.

More returnees

Still, many Ivoirians in refuge want to return home. The UNHCR plans to repatriate 16,000 refugees from neighbouring Liberia this year. In March, the agency and the Liberian government closed down the third camp in southeastern Liberia as more Ivoirians returned home.

UNHCR's Ruso said they will rehabilitate 380 houses in western Côte d'Ivoire to ease refugee resettlement.

"Those who are returning have no houses to go to. Some have benefited from community projects by aid groups, but considering the losses during all these years of crisis, this assistance is very little," said Albert Gbahou, head of Yrozon village in the country's west.

"Everyone is looking at the government for solutions to the problems. The refugees, the displaced who were dispossessed of their land need to get it back in order to settle. Since the returns begun, we have been working with families to help out those returning, but this is quite insufficient," Gbahou added.

Land dispossession has deprived families of livelihoods in the agriculturally rich western Côte d'Ivoire, Human Rights Watch found in an October 2013 study.

"The current pre-election atmosphere does not favour peaceful return of refugees. As long as the problems they are facing are not resolved, there's always a risk of a crisis," said Ivoirian lawyer and political analyst Julien Kouao.

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AFRICA

International Criminal Tribunal for Rwanda (ICTR)

Official Website of the ICTR

Appeals Court Upholds Conviction of Rwandan War Criminal

The Canadian Press
May 7, 2014

The Quebec Court of Appeal has upheld a conviction against Rwandan war criminal Desire Munyaneza.

Munyaneza became the first person ever to be convicted under Canada's Crimes Against Humanity and War Crimes Act. He was found guilty in 2009 of several charges relating to rape and civilian massacres in Rwanda.

The charges occurred during the genocide of 800,000 Rwandans -- mostly minority Tutsis and moderate Hutus, between April and July of 1994.

Munyaneza was arrested by the RCMP at his Toronto-area home in 2005 and eventually convicted on seven charges related to genocide, war crimes and crimes against humanity. He was sentenced to automatic life in prison.

Quebec Superior Court Justice Andre Denis oversaw the two-year case and heard from 66 witnesses in court proceedings that were held in Canada, Europe and Africa.

Is ICTR's Theodor Meron Holding Justice to Ransom?

AllAfrica.com
By Diogene Bideri
May 14, 2014

The Appeals Chamber of the International Criminal Tribunal for Rwanda (ICTR) on February 11 acquitted Gen. Augustin Ndindiliyimana and the former commander of the Reconnaissance Battalion, Maj. Francois -Xavier Nzuwonemeye, while Capt. Innocent Sagahutu, second-in-command of the Reconnaissance Battalion, had his sentence reduced from 20 to 15 years.

Strangely enough, the verdict on the principal defendant, Gen. Augustin Bizimungu, whose case was severed from that of other defendants, was deferred with no explanation. It should be remembered that the Trial

Chamber had sentenced him to 30 years in prison for genocide, crimes against humanity and war crimes.

Why was this deferral ordered while the case was heard in a joint trial known as "Military II"?

There is considerable evidence that this is a tactic geared towards pouring oil on troubled waters as it came amid the 20th commemoration of the Genocide against the Tutsi. Over the past years, the Appeals Chamber of ICTR, presided over by Judge Theodor Meron, has acquitted or reduced the sentences of defendants who had been found guilty of genocide, crimes against humanity and war crimes by Trial Chambers.

It appears from several appeal decisions by Judge Meron that the legal reasoning thereof was insufficiently defensible and that such decisions aim at nothing less than neutralising bold decisions rendered by Trial Chambers.

The inconsistency of appeal decisions by Judge Meron could already be noticed in 2009 with the acquittal of Protais Zigiranyirazo. He disqualified a prosecution witness BCW, whose testimony would be sufficient in itself to eliminate the reasonable possibility that the evidence of Zigiranyirazo's alibi is true. In describing the time, Zigiranyirazo had claimed that he was in Kigali during the massacres that occurred at Kesho (Gisenyi) and in Kesho during the massacres that took place in Kigali.

The panel presided over by Judge Meron turned its attention to the defendant's nieces and nephews; President Juvenal Habyarimana's sons and daughters, to hold that the evidence of the defendant's alibi was true. However, Zigiranyirazo witnesses had not confirmed his presence at Kanombe in the time period during which he was seen at Kesho during the massacres of displaced Tutsi. This could have eliminated any reasonable possibility that the evidence of alibi is true. Similarly, there was no reason to doubt that Zigiranyirazo was able to travel between his village and Kigali within 45 minutes.

Even more cynical is the reduction of the sentence of Col. Théoneste Bagosora and Col. Anatole Nsengiyumva, both of who had both been sentenced to life in prison for genocide, crimes against humanity and war crimes on the basis of command responsibility.

Despite having held him criminally liable, Judge Meron reduced the sentence to 35 years in prison for Bagosora and to 15 years for Anatole Nsengiyumva.

However, the severity of the charges against Bagosora and Nsengiyumva could not, under any circumstances, allow the Judge to order such a substantial reduction of sentence.

Another emblematic trial is the one known as 'Government II', which included former Cabinet ministers Justin Mugenzi and Prosper Mugiraneza.

The trial judge had ruled on the defendants' liability based on the circumstances surrounding the Cabinet meeting of April 17, 1994, and their intent to incite people to massacre the Tutsi by participating in the ceremony that took place in Butare on April 19, 1994. The genocidal intent could be inferred from the role played by Mugenzi and Mugiraneza in removing Prefet Jean-Baptiste Habayrimana from office to trigger off the onslaught of large-scale massacres in Butare. This conclusion was backed up by the accussed's participation in the swearing-in ceremony of the new prefet two days later. It should be recalled that Mugenzi gave his speech shortly before that of interim President Théodore Sindikubwabo.

The defendants' participation in these two successive events with tragic consequences (triggering the onslaught of massacres in Butare Prefecture) could only be justified by the two ministers' adherence to the genocidal policy of the Interim Government.

With the stroke of a pen , the panel presiding by Judge Meron quashed the Trial Chamber's decision because, in his opinion, Mugenzi and Mugiraneza were ignorant of the content of Sindikubwabo's speech and had participated in that meeting solely for protocol purposes.

Finally, Judge Meron acquitted Gen. Ndindiliyimana citing lack of evidence of the latter's effective control over the gendarmerie during the 1994 Genocide against the Tutsi. He neglected to mention (and we take him at his word) that as Chief of Staff, Ndindiriyimana had effective control over the gendarmes operating throughout the national territory. There is a clear evidence that Ndindiriyimana, as a number of witnesses pointed out, had all the information about the massacres and continued to give orders to his subordinates. Judge Meron went so far as to hold that Ndindiriyimana could not exercise control over the Gendarme Unit that guarded his house at Kansi and massacred people in this very area.

Using the same argument, the panel presiding by Judge Meron denied direct involvement of Maj. François Xavier Nzuwonemeye in the assassination of Prime Minister Agathe Uwilingiyimana and the murder of 10 Belgian peacekeepers assigned to her protection on the grounds that the defendant was unaware of the assassination plan implemented by his subordinates.

Yet, a large number of people testify that Nzuwonomeye gave orders and provided reinforcements to the unit that assassinated the prime minister and murdered the Belgian soldiers.

Should such a series of acquittals and mitigation of sentences be seen as a mere contrast between the Trial Chambers and the Appeals Chamber or Judge Meron's declared commitment to release the masterminds of the Genocide?

Many lawyers view this as Judge Meron's plan to use his rulings to create case law that would overturn all ongoing and upcoming decisions that would be rendered based on the principle of command responsibility.

However, such an important principle was used inter alia in the Nuremberg trials where several Nazi leaders were convicted of unspeakable crimes committed by their subordinates. This same principle was used by such other courts as the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia (ECCC) and the Trial Chambers of ICTR and ICTY.

Judge Meron is engaged in a fierce battle against the principle of superiors' criminal command responsibility to an extent that creates an atmosphere of scandal.

Despite compelling evidence, he acquitted two Croatian generals Ante Gotovina and Mladen Markac in November 2012, who are well-known for their role in the 1995 massacres of Krajina Serbs. Similarly, Judge Meron on February 28, 2012, acquitted Momcilo Perisic, the former Yugoslav army Chief of Staff. According to Judge Frederik Harhoffdge, Judge Meron would have forced sitting Judges to acquit the defendants.

The cases of Bagosora, Nsengiyumva, Zigiranyiranzo, Mugiraneza, Mugenzi, Ndindiriyimana and Nzuwonemeye alone are sufficient to create the belief that other decisions rendered by Trial Chambers will be challenged at the appellate level despite lack of further evidence, with Judge Meron hiding behind the magic formula ; "the Chamber was not satisfied beyond reasonable doubt."

Indeed, all these acquittals were always accompanied by dissenting opinions which indicate that despite compelling evidence, Judge Meron is perfectly free to quash a decision rendered by Trial Chambers regardless of whether he finds an error or further evidence.

This merits much greater attention. There can be no doubt that the deferral of the verdict of February 11 about Gen. Augustin Bizimungu is very much in line with Judge Meron's strategy to reduce the sentence of, or just acquit the defendant. It was not until the end of ceremonies marking the 20th Genocide commemoration that he will finally announce the verdict.

Also, despite the Prosecutor's appeal, Judge Meron granted early release to Dr Gérard Ntakirutimana sentenced to 25 years in prison for genocide and extermination. It is clear that those who missed out on being acquitted by him will be granted early release.

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Mali

3 UN peacekeepers wounded by land mine in northern Malian town of Kidal, spokesman says Associated Press
The Republic
May 13, 2014

A spokesman for the U.N. mission in Mali says three of its peacekeepers have been wounded in the country's far north.

Spokesman Olivier Salgado said a U.N. vehicle hit a land mine Tuesday morning near the peacekeepers' base in Kidal. He said they were lightly wounded and being taken to Gao for medical treatment.

Kidal is home to a separatist rebellion by ethnic Tuaregs and al-Qaida-linked militants are also active in the area.

The situation there has remained tense since a French-led military operation ousted jihadists from power in the major towns across northern Mali in early 2013.

Attacks by extremists have continued despite the presence of French, U.N. and Malian forces.

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EUROPE

International Criminal Tribunal for the Former Yugoslavia (ICTY)

Official Website of the ICTY

Domestic Prosecutions In The Former Yugoslavia

Mladic Seeks Delay to Defence Case

Institute for War and Peace Reporting
By Rachel Irwin
May 1, 2014

Lawyers representing wartime Bosnian Serb army commander Ratko Mladic have requested a delay to the start of their defence case, citing technical issues.

Mladic's defence case is currently scheduled to begin on May 13.

His lawyers say that since the tribunal upgraded to a new computer operating system, they have faced numerous glitches that have made trial preparations difficult. In their April 24 motion, they stress that they have tried to resolve the problems using the resources available to them, but to no avail.

"The defence emphasises its hesitance in filing a motion, but at this time sees no other solution, due to the overwhelming nature of the problems, and the failure to have the same resolved despite patience and continued cooperation with the various technical organs of the tribunal, " the motion states.

The lawyers have asked for an additional three weeks of preparation time, starting from the date on which all the technical problems are fixed.

In response, the prosecution contended that the suspension being requested would cause "a substantial delay in the proceedings ".

"In light of the allegations raised by the defence, the prosecution requests that a hearing be convened as soon as possible to discuss the technical problems identified by the defence and the steps necessary to correct them, " the prosecution stated.

On April 29, tribunal registrar John Hocking addressed the claims in Mladic's motion.

"The registrar submits that, while the defence may have experienced some technical issues relating to the upgrade of the tribunal's operating system, these were minor in nature and did not materially interfere with the defence team's ability to prepare for the next phase of the trial, " Hocking stated.

The matter is currently before the Mladic bench.

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

He is accused of planning and overseeing the 44-month siege of Sarajevo that left nearly 12,000 people dead, as well as the massacre of more than 7,000 men and boys at Srebrenica in July 1995.

Mladic was arrested in May 2011 after spending 16 years as a fugitive. His trial began in May 2012 and the prosecution rested its case in February of this year.

On April 15, judges turned down Mladic's request to be acquitted of genocide before the start of his defence case.

Karadzic Requests Separate Sentencing

Institute for War and Peace Reporting
By Rachel Irwin
May 9, 2014

Wartime Bosnian Serb president Radovan Karadzic has asked judges to issue a separate sentencing decision if he is convicted, rather than including the prison term in the judgement itself.

"The reason for this request is based on the extraordinarily broad scope of the indictment in Dr Karadzic's case, " his May 5 submission states. "The trial chamber will have to deliberate on 340 possible verdicts: 263 separate crimes contained in the schedules to the indictment and 77 separate decisions on the mode of liability. "

Karadzic, who was president of Bosnia's self-declared Republika Srpska from 1992 to 1996, is accused of planning and overseeing the massacre of more than 7,000 Bosnian Muslim men and boys at Srebrenica in 1995, as well as the 44-month siege of Sarajevo that left nearly 12,000 people dead.

The indictment – which lists 11 counts in total – alleges that he was responsible for crimes of genocide, persecution, extermination, murder and forcible transfer which "contributed to achieving the objective of the permanent removal of Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory ".

Karadzic was arrested in Belgrade in July 2008 after 13 years on the run. His trial officially began in October 2009 and was completed as of May 1, with the close of his defence case.

Closing arguments are scheduled to commence on September 29 of this year, but a verdict is not expected until October 2015.

In his request, Karadzic argued that if, for example, he were to be acquitted of the two genocide counts in his indictment, his "sentence ought to be different than if he was convicted on all crimes ".

Similarly, if he is "found liable only as a superior for failure to punish or prevent some crimes, his sentence ought to be different than if he was found to have planned or ordered the crimes ".

"If the parties' sentencing submissions are to be meaningful in this case, they should be made after having knowledge of what Dr Karadzic has been convicted of. This is not only a matter of fairness to the parties, but the trial chamber itself would be greatly assisted by such focused submissions, " he argued in his submission to judges.

Karadzic noted that while it has been practice at the tribunal to hand down a sentence at the same time as the verdict, other courts – like the International Criminal Court and the Special Court for Sierra Leone – issue a separate sentencing judgement.

"This reflects the emerging view that such a procedure is fairer and of more assistance to the court in the complex cases increasingly heard before international tribunals than the unified judgment procedure, " the submission continued. "Dr Karadzic's case is certainly one of the more complex cases to be heard by such tribunals. "

Mladic Defence Case Delayed Because of IT Issues

Institute for War and Peace Reporting
By Rachel Irwin
May 9, 2014

Judges at the Hague tribunal have postponed the start date for Ratko Mladic's defence case by one week after his lawyers complained of technical glitches that hindered their preparations.

The defence case will now begin on May 19 instead of May 13. However, a pre-defence conference will go ahead as scheduled on May 12.

Mladic's lawyers had argued that a computer system upgrade had caused numerous problems, and they requested a three-week delay from the date the issues were resolved.

The bench responded with a written decision saying that "while the defence raises various detailed technical complaints, it fails, for the most part, to explain or demonstrate to what extent such technical inconveniences impact its ability to prepare for the defence case ".

However, "the chamber understands that having to deal with technical problems wastes time intended to spend on substantive defence case preparations. At least for a number of days in April 2014, some of the members of the defence team encountered technical problems in their work. In order to compensate for some of these inconveniences, the chamber will grant the defence some additional time, " judges concluded.

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

He is accused of planning and overseeing the 44-month siege of Sarajevo that left nearly 12,000 people dead, as well as the massacre of more than 7,000 men and boys at Srebrenica in July 1995.

Mladic was arrested in May 2011 after spending 16 years as a fugitive. His trial began in May 2012 and the prosecution rested its case in February this year.

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MIDDLE EAST AND ASIA

Extraordinary Chambers in the Courts of Cambodia (ECCC)

Official Website of the Extraordinary Chambers
Official Website of the United Nations Assistance to the Khmer Rouge Trials (UNAKRT)

Khieu Samphan Hospitalized, Appeals Scope of Case

The Cambodia Daily
By Lauren Crothers
May 7, 2014

Khieu Samphan, the former Khmer Rouge head of state currently on trial for crimes against humanity, has once again been hospitalized, his lawyer said Tuesday.

The 82-year-old defendant is also appealing the scope of the next phase of the trial against him, according to his national lawyer Kong Sam Onn, who said his client fell ill a few days ago and was sent to Khmer-Soviet Friendship Hospital.

"He is in hospital. Generally he has good health, but now he has a cold and a fever," he said.

Ms. Sam Onn said that Khieu Samphan's defense team, concerned about his right to a speedy trial, has filed an appeal to the tribunal's Supreme Court Chamber asking them to set out when the former Khmer Rouge leader will face the long list of charges included in the Case 002 indictment, following the Trial Chamber's decision to select only some of the crimes to be heard in the second phase of the case.

"So far, they have only decided on the scope they are going to hear for Case 002/02, but we don't know what they are going to do with the rest of the chargesâ€"they are silent on this," he said. "This is in violation of Khieu Samphan's rights. He is supposed to know when he is going to be tried for these charges."

Samphan Team Takes Issue with Trialâ€™s Scope

The Phnom Penh Post
By Stuart White
May 9, 2014

The defence team for Khieu Samphan has appealed the Khmer Rouge tribunal trial chamber's decision to limit the scope of the second phase of Case 002, saying the move was flawed in its reasoning and violated the rights of its client.

The court's severance decision limited the scope of Case 002/02 to a certain number of crime sites, which the prosecution maintained at the time would

provide a "representative" sampling of all of the remaining charges in the indictment.

Proceedings for the second phase of the case haven't begun, while a verdict in the first phase, or Case 002/01, is expected in the coming months.

In its filing, dated May 5, the former Khmer Rouge head of state's defence team argued that the severance failed to address the issue of the individual crime sites that would be left out of Case 002/02, and that the trial chamber had placed expediency over their client's rights. The defence team said it was unable to plot out a legal strategy for the next phase without knowing the fate of the remaining charges.

After the trial chamber's decision to first divide Case 002 into multiple subtrials, the Supreme Court Chamber found that it had, according to the filing, "committed the error of not furnishing a 'tangible plan'" for future trials.

"It is clear that the Chamber has committed the same error," Monday's filing states.

"What's more, the other circumstances that prevailed at the time of the preceding severances are still an issue," it continues. "In effect, in the contested decision, the Chamber constantly puts at the fore the speed of the proceedings and reiterates that its principal preoccupation is being able to 'pronounce a judgment supporting a certain number of accusations enunciated in the indictment and while the Accused, the civil parties and the victims are still alive'."

Monday's filing came two days after Samphan was sent to hospital, according to court spokesman Neth Pheaktra.

"He was sent to hospital on May 3, Saturday, and now he remains in hospital with a cold … and fever," he said, adding that the ailment was not serious. "Right now, he is getting better, and he remains in the hospital [under] the doctor's control. As you know, [he] is very old, 82 years old. So when he gets a cold or fever he needs to be sent to the hospital."

In late April, the war crimes court officially accepted the results of a recent medical examination of its two defendants - Samphan and Nuon Chea - saying in a pair of filings that the octogenarians were "capable of meaningful participation in [their] own defence and [are] therefore fit to stand trial".

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Iraqi High Tribunal

Grotian Moment: The International War Crimes Trial Blog

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Syria

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Special Tribunal for Lebanon

Official Website of the Special Tribunal for Lebanon
In Focus: Special Tribunal for Lebanon (UN)

STL's Roux Defends Action Against Lebanese Journalists

The Daily Star

May 2, 2014

The Special Tribunal for Lebanon's Defense office Friday defended summons issued against two Lebanese journalists after many Lebanese officials complained that the action violated freedom of the press.

The Defense Office submitted a request to [an STL] judge to open an investigation after a website published photographs said to be that of witnesses," head of the STL Defense Office Francois Roux told LBCI television channel.

"At the time, rumors quickly surfaced that the Defense Office was behind the leaks," Roux added, pointing out that the STL took swift action by asking judges to launch an investigation to determine the source of the leak.

Roux said such leaks "could adversely affect witneness' security and later witnesses from the Defense Office."

"It is natural for the STL and international courts to provide protection for the witnesses and the defense witnesses," Roux added.

"We are in the middle of a judicial process, and there are some journalists accused," he said in reference to editors of the pro-Hezbollah Al-Akhbar newspaper and Al-Jadeed TV.

The STL issued summons last week for Al-Akhbar editor-in-chief Ibrahim al-Amin and Karma Khayyat, the deputy news director at Al-Jadeed, accusing them of contempt and disrupting justice after the media outlets published a list of alleged names of witnesses.

Justice Minister Ashraf Rifi has defended the STL and urged journalists to do their duty under the law.

Rifi said that while freedom of expression is protected by the Lebanese Constitution, journalists, under Lebanese law, are "prohibited from breaching the confidentiality of the judicial investigation and publishing of witnesses' names, which could have a negative impact on the course of justice."

STL Going Ahead with Contempt Cases Against Al-Akhbar, Al-Jadeed

Naharnet

May 7, 2014

The Contempt Judge at the Special Tribunal for Lebanon has ordered initial appearances on Tuesday, May 13 of the accused in the case against New TV S.A.L. and Karma Khayat, and of the Accused in the case against Akhbar Beirut S.A.L. and Ibrahim al-Amin, announced the STL in a statement on Wednesday.

"The two journalists and two media organizations were charged with contempt before the tribunal for knowingly and willfully interfering with the administration of justice," it added.

As stated by the Contempt Judge in the summons, the accused may decide either to come to the seat of the tribunal or to make their initial appearance by video-conference, provided that counsel attends in person.

The hearings will be public, but the judge may decide to go into closed session if confidential matters need to be discussed, said the STL statement.

The hearings can be followed live on the STL website in Arabic. English and French.

New TV S.A.L. and Khayat, the network's deputy news and political program manager, are charged with "knowingly and willfully interfering with the administration of justice by broadcasting and/or publishing information on purported confidential witnesses" and "knowingly and willfully interfering with the administration of justice by failing to remove from al-Jadeed TV's website and al-Jadeed TV's YouTube channel information on purported confidential witnesses."

Akhbar Beirut S.A.L. and al-Amin, the newspaper's editor-in-chief, are charged with "knowingly and willfully interfering with the administration of justice by publishing information on purported confidential witnesses in the Ayyash et al. Case."

In April last year, a list of 167 names of so-called witnesses for the former premier Rafik Hariri trial was published by a previously unknown group identified as "Journalists for the Truth".

The group said it wanted to "unveil the corruption" of the STL.

Both al-Akhbar and al-Jadeed published the list.

The STL's spokesperson Marten Youssef explained recently that the journalists' trial will take place before an independent judge.

Information Minister Ramzi Jreij said of the summons: "Investigations with al-Jadeed and al-Akhbar will prove their innocence."

He warned the two journalists of failing to appear before the STL's hearing, saying: "This move will lead to repercussions including the issuance of arrest warrants."

Several lawmakers voiced their solidarity with the journalists and slammed the STL for its actions.

Hizbullah's MP Hassan Fadlallah said that the move is an assault on the freedom of the Lebanese, warning: "Any journalist uncovering the corruption of the tribunal will have the same fate as al-Khayat and al-Amin."

The STL, established at Lebanon's request, seeks to try five members of Hizbullah for the attack that killed former PM Hariri and 22 others on February 14, 2005, in Beirut.

Hariri Trial Postponed Until Late June

Al Bawaba

May 8, 2014

The trial of five Hezbollah members accused of complicity in the assassination of former Prime Minister Rafik Hariri will not resume until at least late June, in yet another delay for the court prosecuting the case.

The delay came as the Special Tribunal for Lebanon announced the timetable for the controversial first hearing on May 13 involving senior Lebanese editors who will stand trial for contempt.

Karma Al Khayyat, the deputy head of news at Al Jadeed, is scheduled to appear before an STL judge Tuesday at 11:30 a.m. Beirut time. Ibrahim Al Amin, the editor-in-chief of the pro-Hezbollah daily Al Akhbar, is set to appear at 4:30 p.m., the court announced in a statement.

The two journalists are charged with contempt for "knowingly and wilfully interfering with the administration of justice," according to the STL. The accusations are related to Al-Jadeed and Al-Akhbar publishing personal details of individuals who they said are witnesses in the case.

Khayyat and Amin can appear in person before the court or via video-conference, and if convicted could face a maximum sentence of seven years in prison, a fine of 100,000 euros, or both.

The STL, which is tasked with prosecuting those responsible for the 2005 Valentine's Day bombing that killed Hariri and 21 others, issued a robust defense of its contentious decision to try the journalists.

Critics accused the tribunal in recent days of throttling freedom of the press in Lebanon, abusing its power and double standards, since it did not fight Western news outlets that published sensitive, leaked details of the Hariri investigation.

In a detailed rebuttal to the attacks, the STL argued that the trial "would reduce the risk [that] the public will lose confidence in the ability and will of the tribunal to protect witnesses."

It also defended itself against charges of curtailing freedom of the press by saying that publicizing the names of protected witnesses has serious consequences on the STL's work.

"The freedom of expression guarantees everyone's right to hold opinions and expressions, receive and impart information and ideas as long as they are in accordance with the applicable laws," the court said. " comply with;The freedom of expression is not absolute and journalists and media organizations must the law."

The STL also confirmed the investigation into the Al Jadeed and Al Akhbar incidents showed the alleged witness details were likely not leaked to the outlets by tribunal personnel.

But the court did not offer a convincing argument for why the leaking of sensitive investigation details was not considered a serious enough violation to be prosecuted.

German magazine Der Spiegel first disclosed the alleged involvement of Hezbollah members in the Hariri assassination in 2009, relying on leaked documents. The Canadian Broadcasting Corporation published a report in 2010 that revealed sensitive details including the investigation's breakthroughs in tracking phones used by the suspects involved in the assassination.

The Hague-based court initially indicted four members of Hezbollah in connection with the killing. Their trial in absentia began in January.

But a fifth member of the party, Hassan Merhi, was indicted last summer and his trial was joined to that of the other four suspects. Merhi is accused of being one of the leaders of the assassination team, allegedly playing a key role in plotting a false claim of responsibility for the attack by a fictitious, extremist group.

While joining the two cases makes logical sense - Merhi is accused of conspiring with the other suspects to carry out the same crimes - it poses a dilemma for the court which is obliged to give Merhi's lawyers enough time to conduct investigations and prepare their defense.

The court's trial chamber said in a filing on the STL website that trial would resume shortly after June 16, the date when Merhi's lawyers are expected to file their "pre-trial brief" - a document outlining their theory in the case.

Judges had initially said they would need until at least the middle of May before resuming trial.

The court is expected to decide on a new date for resuming trial at a "status conference" Monday, during which it will address issues related to Lebanon's cooperation with the STL. Defense lawyers accuse the Lebanese authorities of failing to cooperate with their investigations.

The court's dilemma was sharply illustrated in a dissenting opinion published on the court's website and written by Judge Janet Nosworthy, a sitting judge on the trial chamber. Judge Nosworthy said Merhi's defense lawyers should be given until mid-July to file the pre-trial brief, and trial should not begin again until September or October.

She argued that the high volume of evidence, expert reports and testimony, as well as the highly technical nature of the telecommunications evidence that forms the backbone of the prosecution's case requires giving the defense more time to prepare.

"Giving the Merhi defense a longer and more appropriate period ... will provide additional time for research and investigation, and allow them to be suitably informed and bring them to a sufficient stage of preparedness," Judge Nosworthy said.

"This in turn will better serve the judicial process in its search for truth and justice, being also consistent with the primary interests of the victims."

STL: Prosecution of Journalists Aimed at Protecting Witnesses
The Daily Star
By Kareem Shaheen
May 10, 2014

The Special Tribunal for Lebanon's decision to prosecute Lebanese journalists is a message to witnesses that the court will protect them, the tribunal's spokesman told The Daily Star Friday.

Marten Youssef said both Al-Jadeed TV and Al-Akhbar newspaper had agreed to participate in an initial hearing Tuesday ahead of a trial for contempt, over the decision by the two outlets to publish personal details of individuals they said were court witnesses.

Youssef also said the hearing is a platform for the two outlets to weigh in on allegations that they deliberately interfered with the administration of justice by intimidating witnesses.

"We recognize that there is a free press in Lebanon and our intent is not to silence that free press whatsoever," Youssef said in an interview with The Daily Star. "That said, we have a responsibility to the preservation and protection of witnesses who are willing to put their lives at stake so that they can be a part of the process of searching for the truth."

"These particular contempt charges are a serious commitment by us to demonstrate to the witnesses that we are taking the judicial measures to

ensure that you are protected, to prove to the Lebanese citizens that the tribunal takes these issues very seriously," Youssef said.

Ibrahim al-Amin, the editor-in-chief of the pro-Hezbollah daily Al-Akhbar, and Karma al-Khayyat, the deputy head of news at Al-Jadeed TV, along with their parent companies, were accused by the court of "knowingly and willfully interfering with the administration of justice."

They are scheduled to appear in an initial hearing on May 13 ahead of a trial for contempt.

The allegations are linked to two articles by Al-Akhbar and video reports by Al-Jadeed containing information on alleged witnesses in the case.

The STL is tasked with prosecuting those responsible for the 2005 Valentine's Day bombing that killed former Prime Minister Rafik Hariri and 21 others. The court has indicted five members of Hezbollah in the case, and began their trial in absentia earlier this year.

Youssef said he hoped that Al-Jadeed and Al-Akhbar would cooperate with the court, saying the initial hearing offered a platform for them to express their points of view.

"They are innocent until proven guilty," he said. "There are no arrest warrants, there is only a summons to appear, so we are not trying to silence them, quite the opposite."

"We are actually inviting them to come and speak at the tribunal, to come and address this issue, because witness intimidation and interference in the judicial process in any jurisdiction, national or international, is a serious crime and a serious allegation," he added. "They are being given a platform in which they can present their particular arguments."

Youssef said the court had been informed that both outlets would participate in the hearing, though it was still unclear whether they would appear in person or via video before the contempt judge.

In its decision ordering the launch of contempt proceedings, the court describes incidents in which victims and witnesses made phone calls triggered by the publication of the alleged witness details - likely out of concern that their names were made public.

The court had avoided in the past saying whether any of the names in Al-Akhbar and Al-Jadeed's stories were of actual witnesses, saying only that the reports put the lives of the individuals at risk whether or not they were witnesses.

"This is why we're doing this," Youssef said, referring to the safety of witnesses.

"Let's not lose sight of that."

The court has so far heard the testimony of 15 prosecution witnesses. Just five of those have had their identities concealed.

Youssef said the contempt charges were not a violation of freedom of the press, saying media outlets had a responsibility to avoid publishing information that interfered with justice and adding that such limitations were recognized in both Lebanese and international law.

Youssef also defended the STL against charges of double standards by critics who argued that the court did not prosecute Western news outlets that published sensitive details of the Hariri investigation.

German magazine Der Spiegel first disclosed the alleged involvement of Hezbollah members in the Hariri assassination in 2009, relying on leaked documents. The Canadian Broadcasting Corporation published a report in 2010 that revealed sensitive details about the investigation.

But Youssef said the STL did not prosecute Lebanese outlets including Al-Jadeed when they published confidential information like the names of four Hezbollah suspects indicted by the court before their names were made public.

Youssef said this proved the tribunal did not want to silence its Lebanese critics, but to protect witnesses from intimidation.

"Why are we only comparing with CBC or Der Spiegel?" he asked. "Why don't we compare it with Haqiqa leaks which were also on Al-Jadeed, or information that was published in so many other Lebanese media that published confidential information?"

"All that proves is that the tribunal is not after silencing the press at all, but one of its foremost responsibilities is to prevent witness intimidation, to make sure that witnesses can testify free of intimidation, free of threats to their lives, and when that happens we are bound to take judicial action," he added.

Youssef reiterated the findings of the investigation that the alleged witness details did not come from current or former tribunal staff.

"We must keep in mind that just because it's being labeled a leak does not constitute an actual fact," he said.

Youssef said he knew the court would be subjected to criticism for the move to prosecute the journalists, but said it had an obligation to act anyway.

"There is recognition that this step would be criticized by the media and this is a natural reaction," he said. "What we are trying to do is to provide the facts: that this is ultimately about witness protection, about those who interfere in the judicial process with the purpose of intimidating witnesses."

STL to Resume Trial June 18

The Daily Star
By Kareem Shaheen
May 12, 2014

The trial of five Hezbollah suspects accused of complicity in the killing of former Prime Minister Rafik Hariri will resume on June 18, the Special Tribunal for Lebanon's trial chamber announced Monday.

The majority decision by the U.N.-backed court will end a temporary break in the trial intended to give defense lawyers for Hasan Habib Merhi, a member of Hezbollah indicted just last summer by the court, enough time to prepare their case.

David Re, the presiding judge of the trial chamber, said the court had to balance the rights of the suspects with trial needs without unnecessary delays.

The STL is tasked with investigating the 2005 Valentine's Day bombing that killed Hariri and 21 others and plunged Lebanon into political turmoil.

The court initially indicted four members of Hezbollah in the case and began their trial in January.

But Merhi, a fifth member of the group, was indicted last summer and his trial joined to the other suspects.

Merhi is accused of being one of the leaders of the assassination team and helping orchestrate a false claim of responsibility for the attack.

The resumption of trial is aimed at giving defense lawyers more time to prepare more contentious parts of the case, including the telecommunications evidence amassed against Merhi and his alleged role in the conspiracy to assassinate Hariri.

The hearings that will resume in June will include 25 witnesses divided into three groups.

In the first phase, five witnesses will testify about the underwater search near the St. George Hotel for fragments from the site of the explosion, as well as the identification and collection of human remains at the scene and the activities of law enforcement agencies there.

The second group will include experts in forensics and DNA evidence, as well as three witnesses who will testify about collecting fragments of the Mitsubishi van that was allegedly used to destroy Hariri's convoy. The group will also include a seismologist whose equipment registered a tremor caused by the Hariri bombing.

The last group will include witnesses who are expected to testify on the nature of the explosion and the size of the resulting crater.

Al-Jadeed Pleads not Guilty in STL "Contempt" Case, Al-Akhbar Session Postponed

Al Akhbar
By Marc Abizeid
May 13, 2014

Lebanon's Al-Jadeed TV and its deputy director Karma Khayat on Tuesday pleaded "not guilty" after being charged with obstruction of justice and contempt by an international court set up to investigate the 2005 assassination of former Prime Minister Rafik Hariri.

The Hague-based Special Tribunal for Lebanon (STL) last month announced that it had charged Al-Jadeed's deputy director Karma Khayat, Al-Akhbar's editor-in-chief Ibrahim al-Amin and their media companies for publishing a list of the prosecution's witnesses.

Amin's session was postponed to May 29 after the contempt judge granted his request for more time to prepare his defense. But Amin warned he may also choose not to attend the May 29 session if he is unable to assemble a proper defense counsel.

"Terrorizing the press"

Khayat was present in court Tuesday with her legal team as a judge read the charges against her.

"I came here before you in order to confront charges that touch my core principles and the principles of all journalists. Seeking the truth is a sacred right under all international conventions that guarantee the freedom of the press," Khayat told the court.

"I came here because the Lebanese people deserve the right to see a fair trial being conducted and instead of being used as a tool to terrorize the press," she added.

"I came here today because my government, instead of holding me accountable before the Lebanese courts, and instead of prosecuting me, my government unfortunately is used by outside forces. It relinquishes its sovereignty, and [in 2005] replaced Syrian tutelage with an international one."

Khayat, Al-Jadeed TV, and its parent company New TV SAL have each been charged with two counts of contempt and obstruction of justice over the broadcasting of reports in 2012 on potential STL witnesses.

"Willful interference"

The judge accused Khayat of instructing Al-Jadeed journalist Rami al-Amin to meet with purported witnesses that had been contacted by STL investigators with the prosecution team and learn what information the witnesses provided them with.

The results of Al-Jadeed's investigation were broadcast in five episodes in August 2012 before being uploaded to their website and YouTube channel.

"On August 10, 2012, the [STL] ordered Al-Jadeed to remove any confidential information related to the trial from their websites," but the orders were ignored, the judge told the court Tuesday.

"Khayat knew that broadcasting the episodes would undermine public confidence in the STL to protect the confidentiality of witnesses. Khayat knew that the failure to remove them violated the orders of the STL."

According to the charges, Amin and Khayat "knowingly and willfully interfer[ed] with the administration of justice by broadcasting and/or publishing information on purported confidential witnesses."

Prosecution "got it wrong"

Karim Khan, defense lawyer for Khayat and Al-Jadeed, told the court that this case was the first time in history an international tribunal indicts a legal company over criminal charges, insisting that the prosecution "got it wrong."

He also urged the prosecution to clarify if it was charging Al-Jadeed TV or its parent company, New TV SAL, in the case.

Khan told media after the session was adjourned outside the court that he expected the defendants would be acquitted of all charges.

"I am looking forward to seeing what evidence the prosecution has, or clearly doesn't have," he said. "We expect the defendants to be acquitted."

"What we see is an endemic problem that has infected the prosecutor where they don't even get the charges correct," Khan added. "For the first time in history a company is charged with criminal responsibility. That's never been done with any international court before."

Khan also announced his intention to file a motion to challenge the court's jurisdiction in charging companies.

Earlier, the court's contempt judge Nicola Lettieri said the charges against the media organization were "not concerned with their criticisms of the STL and its work," but related to the alleged interference in the courts proceedings.

Judge Lettieri ordered the prosecution to disclose all its evidence to the defense team, which said it had yet to receive a single document.

The prosecution pledged to transfer its material to the defense by May 30. The judge then adjourned Tuesday's session after setting June 16 as the date for Al-Jadeed to file its preliminary motions.

Amin chose not to participate in afternoon sessions scheduled for him and the newspaper after the STL failed to respond to the paper's request last week to postpone the session.

In court, the registrar explained that Amin's e-mail requests for more time were sent to the wrong inbox, and were only discovered on Monday.

The head of the STL defense office Francois Roux, who has been assisting Al-Akhbar with the case, told the judge that Amin was merely asking for his rights to assemble a defense counsel of his choosing and enough time to mount a proper defense.

Judge Lettieri granted the request for extension, setting the new date for Amin's appearance before the court to May 29 before adjourning Tuesday's session. But Amin announced immediately after the session that if he wasn't able to assemble a robust defense counsel he may skip that session too.

"If I wasn't able by May 29 to have a defense team that I feel comfortable with, I'm telling you from now that I'm not going to attend the May 29 session," he said.

"Illegitimate court"

The charges against Amin and Al-Akhbar relate to the paper's decision in January 2013 to publish the names of 32 witnesses belonging to the STL's prosecution.

In televised remarks, Amin said he stood by the paper's decision to publish the witness list, and rejected the legitimacy of the STL, which he maintains was created in violation of the Lebanon's constitution and international law through its "mandate ... to impose its power on all Lebanese institutions and authorities."

"Al-Jadeed and Al-Akhbar have adopted different strategies. Al-Jadeed decided to attend, though that doesn't mean that they believe in the court's legitimacy, and their presence is of course useful," Amin said.

"However Al-Akhbar decided not to attend because we don't even believe in the legitimacy of the court and its decisions in the first place."

"We asked for time so that we can make arrangements concerning the defense mechanism to make sure we have all the required documents and were ready to defend ourselves."

Journalist solidarity

Amin joined other journalists and supporters of press freedom who gathered at the Lebanese Press Syndicate in Beirut to denounce the STL's charges against Al-Akhbar and Al-Jadeed.

"I do not expect much support from the Lebanese authorities," Amin told the crowd during a recess in Khayat's morning session.

"Al-Akhbar and Al-Jadeed are locked in a serious battle in the defense of freedom in Lebanon and the Arab world, and the problem lies in the Lebanese state that allows these abuses against the press," he said.

"The international community acts according to its interests, and the Lebanese media's interests today are to strengthen the laws and delegitimize this court."

If found guilty, Khayat and Amin could face up to seven years in prison and be fined up to 100,000 euros.

Al-Jadeed and Al-Akhbar have received the full backing of Lebanon's Press Syndicate, the Media and Telecommunications Committee in Parliament, and top political figures including former Prime Minister Najib Mikati who called on the STL not to get distracted from following through with its stated mission of uncovering who killed Hariri.

Amin Decides Not to Appear for STL Hearing

The Daily Star
By Kareem Shaheen
May 13, 2014

The editor-in-chief of Lebanon's Al-Akhbar newspaper will not appear at Tuesday's hearing for contempt before the Special Tribunal for Lebanon, after the court apparently failed to address the newspaper's request to postpone the session, in the latest twist in the controversial case against two Lebanese media outlets.

Ibrahim al-Amin was scheduled to appear at 4:30 p.m. Beirut time before the STL's contempt judge, after Karma al-Khayyat, the deputy head of news at Al-Jadeed TV, who traveled to The Hague to attend the hearing.

The two journalists are charged with contempt over news reports in which the outlets disclosed details of alleged STL witnesses.

The decision, which Amin confirmed in a telephone interview with The Daily Star, poses a dilemma for the court, which has avoided issuing arrest warrants for the editors.

Al-Akhbar's management said in a statement that it asked the court on May 8 to postpone the hearing in order to "secure all the rights of the defense."

But the newspaper said the STL only responded Sunday, saying it had received the letter that morning, without taking a decision on the matter.

In response, Al-Akhbar said Amin would not appear before the court, and held the STL responsible for any harm that may befall the newspaper's staff as a result of the accusations.

"I have an enormous number of clarifications that if I do not get a response to I will of course not appear before it [the court]," Amin told The Daily Star.

The issues include whether STL staff are immune from being summoned as witnesses in the case, whether the contempt charges contravene Lebanese laws, and what criminal codes the STL relied on to accuse the journalists of contempt.

When asked by The Daily Star to comment on Amin's decision, STL spokesman Marten Youssef said: "There is a summons to appear that has been served up on him and he is expected to appear either by video link or in person."

Amin accused the STL of suppressing freedom of the press, saying the contempt charges go against human rights laws.

"It has no role other than to prevent Lebanese media from scrutinizing the work of the tribunal," he said.

Amin said he would also raise the legality and legitimacy of the court's creation. "We are fighting a political, media and legal battle to abolish this court, which has no constitutional or international legitimacy," he said.

Amin also criticized the Lebanese government for surrendering to the STL's authority.

"The Lebanese authorities from 2005 until today are partners in a crime of violating Lebanese sovereignty," Amin said.

The STL is tasked with prosecuting those responsible for the 2005 bombing that killed former Prime Minister Rafik Hariri and 21 others. It has indicted five members of Hezbollah in the case.

The summoning of journalists has triggered criticism and protests by some Lebanese groups against The Hague-based court. The STL says prosecuting the journalists is necessary in order protect witnesses who were intimidated by the disclosures.

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Bangladesh International Crimes Tribunal

Hearings to Start with Kamaruzzaman's Case
The Daily Star
By Ashutosh Sarkar
May 5, 2014

Among the pending appeals of five convicted war criminals, the Supreme Court is now set to hear the appeal of Jamaat-e-Islami

leader Muhammad Kamaruzzaman challenging the death sentence handed down to him.

The International Crimes Tribunal-2 on May 9 last year sentenced Kamaruzzaman, one of the key organisers of the infamous Al-Badr force, to death after finding him guilty of committing crimes against humanity during the country's Liberation War in 1971.

The Appellate Division (AD) of the SC may schedule any day for starting hearing his appeal, as it has already finished the proceedings of a similar case against another Jamaat leader Delwar Hossain Sayedee.

On April 16 this year, the apex court concluded hearing the appeals regarding the sentencing of Sayedee by the ICT-1, and kept the appeals waiting for verdict any day.

Attorney General Mahbubey Alam on April 25 told The Daily Star that he would pray to the SC for starting hearing of the appeal filed by Kamaruzzaman if it is not in its hearing list soon.

Kamaruzzaman's appeal is the first in the serial, and its hearing should be started as soon as possible, since some other similar appeals were pending with the SC.

The attorney general said several months were needed for finishing the proceedings of such a case.

MK Rahman, additional attorney general and chief coordinator of the prosecution, said the SC would hear the appeals of the remaining four convicts one after another.

The appeals filed by former Jamaat chief Ghulam Azam, its Secretary General Ali Ahsan Mohammad Mojaheed, and BNP leaders Salauddin Quader Chowdhury and Abdul Alim will be heard and disposed of one by one after the hearing of Kamaruzzaman's appeal, he said.

Two ICTs have convicted and sentenced them after finding them guilty of atrocities and crimes against humanity in 1971.

Mojaheed and Salauddin were sentenced to death, while Ghulam Azam got 90-year imprisonment and ex-BNP leader Abdul Alim a life-term in jail.

Tajul Islam, one of the defence lawyers for the convicted Jamaat leaders, told The Daily Star on April 25 that he did not know whose appeal would come up for hearing before the AD next.

Since January 2013, 10 people accused of war crimes have been convicted so far, including the six whose appeals are pending. Apart from them, six more are standing trial at the two tribunals. Most of the accused are leaders of Jamaat and BNP.

Fugitive war criminals Chowdhury Mueen Uddin and Ashrafuzzaman Khan were given death penalty by a tribunal on November 3 last year.

Al-Badr operation-in-charge Mueen is now in London, where he has made his name as a community leader. He served as the chairman of Tottenham Mosque and as the director of Muslim Spiritual Care Provision in the National Health Service of the UK.

Ashraf, chief executor of Al-Badr, is now in New York and has been involved in the conservative Islamic Circle of North America, according to the prosecution.

Abul Kalam Azad, another convicted war criminal popularly known as Bachchu Razakar, is also on the run. He was the first of the accused to be convicted by ICT-2. He was sentenced to death in absentia on January 21 last year.

On September 17 last year, the SC handed down the death penalty to another Jamaat leader Abdul Quader Mollah for his wartime atrocities in 1971. Mollah was executed on December 12 last year.

Another Witness Testifies on Shayestaganj Killings

Dhaka Tribune
By Udism Islam
May 6, 2014

A new prosecution witness in the trial of Syed Mohammad Qaisar yesterday claimed that the Pakistani troops had shot and killed his father and six others following the instruction of the accused in Habiganj during the 1971 Liberation War.

Nowshad Ali, 54, son of martyr Majot Ali, gave his deposition at the International Crimes Tribunal 2 as the 11th prosecution witness in the case against the leader of "Qaisar Bahini."

His brother Mostafa Ali, the ninth witness, described the same incident that took place at a food storehouse in Shayestaganj of Habiganj on April 29, 1971. Their father was a security guard at the place.

Nowshad said he had heard about Qaisar from his brother. The duo had witnesses the incident. At the time of incident Nowshad was 11 years old.

The witness, now a security guard at the same storehouse, said he could not continue his studies after his father's killing.

He witnessed how Qaisar and his men had confined his father and others and asked them not to leave the place without his concern. Some members of the Pakistani occupation forces were guarding them.

"The next day the accused came again and led my father and others to the bank of River Khowai. They were made to stand in a line and the Pakistani troops shot and killed them following the signal from Qaisar," Nowshad said.

He continued: "My brother Mostafa Ali and I were witnessing the whole incident from a nearby sugarcane field."

After his deposition, defence counsel SM Shahjahan cross examined the witness and the International Crimes Tribunal 2 adjourned the hearing of the case until May 11.

Qaisar, a former state minister during HM Ershad's tenure, faces 16 charges of crimes against humanity.

Subhan Used to Shoot Dead Youths

Bdnews24.com

May 6, 2014

Testifying at the International Crimes Tribunal-2 on Tuesday, state witness Md Abu Asad, 60, said he had seen Subhan killing people with the arms of Pakistani military.

He said he had joined the Mujaheed force to save his life after being captured by Subhan's cohorts.

Asad said five-seven youths would be shot dead every day under the Hardinge Bridge and he had seen Subhan gun down many there using weapons of the occupation force.

He said he had also witnessed, during attacks on villages he had participated following a 15-day training, that Subhan, then a leader of the Jamaat in Pabna, torch and loot houses of liberation war supporters, kill people and rape women.

The tribunal led by Justice Obaidul Hassan recorded his deposition.

Asad said Subhan had led Pakistani army at around 10am on Apr 14, 1971 to his village, Joynagar, where they torched houses and shot dead people.

He was caught by Subhan accomplices and taken to the army camp near the Hardinge Bridge at Paksi along with five-six others of his village.

The 60-year-old said: "After lining us up in three queues at the army camp, Subhan told us, 'I'm Maulana Abdus Subhan from Pabna. I'm a Muslim. You're also Muslims. Pakistan has to be protected by sacrificing lives'."

He quoted the accused as telling them: "You are a Mujaheed from today. Those who will obey my orders will get all sorts of facility. And those who will not will be shot and thrown in the river Padma."

"We saw 5-7 youths would be brought blindfolded under the Hardinge Bridge every day. Later Subhan would come there in a white private car and when people fell asleep at night he would shoot dead those youths after consultation with Major Joytun."

Asad added: "I saw sometimes Subhan himself and sometimes Pakistani army men kill the youths with pistols."

He said 'Hashem', 'Rustom', and 'Mujibor' were shot and left in the river as they had tried to escape.

The witness further told the court 20-25 people were gunned down at Shahpur village under the leadership of Subhan. The victims included Chandra Ali, Rajab Ali and 'Shamsul', he added.

Some days later, the accused had led Pak army men to Hindu-dominated Arambaria village where they torched houses and killed people as per a list.

Asad said sobbing that he had seen women being raped and killed in front of their fathers and husbands.

He said he had left the Pakistani military and Bangali Mujaheed taking two arms with him and joined the freedom fighters.

At the end of the deposition, the witness identified the accused standing in the dock.

Following the testimony, Subhan's lawyer SM Shahjahan started cross-questioning him.

The court postponed the hearing until Wednesday.

Tortured Victim Testifies at Tribunal

The Daily Star

May 8, 2014

A war crimes victim yesterday testified that Jamaat-e-Islami leader Abdus Subhan shot him after lining him and other detainees up at the premises of a school in Pabna during the Liberation War.

Three of his chest bones were broken in the shooting, Rustam Ali told the International Crimes Tribunal-2.

But that was not the end. Subhan also directed the Pakistani soldiers, who accompanied him in the incident on April 13, 1971, to charge him with bayonet, which left him senseless.

Subhan also shot a detainee dead and injured another, who was later killed by the Pakistani army and Biharis as he had tried to escape by running through the school field, he said. "... I want his [Subhan] execution,"

Rustam, the fourth prosecution witness in Subhan's case, told the tribunal after identifying him in the dock. The Jamaat nayeb-e-ameer faces nine charges, including genocide and murders committed in Pabna during the war. Subhan, however, pleaded not guilty before the court.

During his 50-minute testimony, Rustam, a resident of Juktitala village in Iswardi upazila of Pabna, said he had been working at the shop of Jayenuddin in Pakshi Bazar before 1971.

On the morning of April 13, 1971, Rustam, Joyenuddin and his son-in-law went to Saraghat village to collect some dues. While returning from the village, the trio had heard gunshots and noticed fire in Juktitala.

"Feeling scared, we hid ourselves in a bamboo bush behind one Maizuddin of Juktitala. "But the accused [Subhan] saw us and he along with the Pakistan army and Biharis detained us and took us to Juktitala Jame Masjid," Rustam said.

He said he found Israil, his mother Tulu and his uncle on a Pakistani army truck there and later they [Rustam, Joyenuddin and his son-in-law] along with the trio were taken to Juktitala School by an army truck.

"Moulana Subhan was also in the truck," said the 65-year-old witness.

After reaching the school, he found Harisuddin, Ismail and another person there and all of them were asked to line up, said Rustam.

"In a bid to escape, Harisuddin and Ismail started running away from the line and then Subhan Moulana opened fire from his pistol.

"The shooting left Ismail dead on the spot while bullet-hit Haris fell down near a bamboo bridge," he said.

"But, the Pakistan army and Biharis shot him [Haris] dead on the orders of Moulana Subhan," Rustam said, adding: "Then, Subhan Moulana once again asked us to stand in a line."

"At one stage, Subhan Moulana fired two shots at me. One of the bullets hit me in the left hand and the other in the chest, leaving three broken bones. Then the Pakistan army charged bayonet on my jaws as per his [Subhan] direction and I became senseless," he said.

Rustam wept as he showed his injury marks to the court.

Rustam also said he regained his senses around 4:30pm and one Korban Ali of his village and some other people took him, bullet-hit Israil and Israil's mother to one Tariqul doctor in Ruppur village.

"Korban Ali told us, 'You were about to die unless you were brought here. All other detainees including Joyenuddin and his son-in-law were killed.'"

Rustam said he later went to India for treatment and returned to Bangladesh three months before the end of the Liberation War.

Defence lawyer Shahjahan Kabir asked the witness a single question before the three-member tribunal led by Justice Obaidul Hassan with members Justice Md Mozibur Rahman Miah and Justice Md Shahinur Islam adjourned the proceedings until May 12.

Rustam will face cross-examination on that day.

Meanwhile, defence yesterday completed cross-examining two prosecution witnesses in the war crimes case against ATM Azharul Islam.

Defence counsel Abdus Sobhan Tarafdar examined the credibility of the statements of the siblings who testified about torture on them by the war crimes accused at the International Crimes Tribunal-1.

Azhar is facing six charges of murder, genocide and crimes against humanity committed during the Liberation War.

The defence counsel made suggestions that that the witnesses gave untrue statements against Azharul. Both the witnesses, however, denied the suggestions.

In their deposition, Rafiqul Hasan Nannu described how he was lashed by electric wires on the morning of December 1, 1971.

Rafiqul's younger brother Sakhawat Hossain Ranga said the war crimes accused had slapped him hard for chanting 'Joy Bangla' on a day of mid November.

Azhar had been produced at the dock. The proceedings of the case were adjourned till May 18.

Subhan Involved in Atrocities in Pabna

The Daily Star

May 8, 2014p>

A prosecution witness yesterday said the Pakistani army and Jamaat-e-Islami leader Abdus Subhan forced him to work with them for seven and a half months in 1971, and Subhan led the invaders to carry out atrocities in Pabna during that time.

Abu Asad, a member of Mujaheed Bahini, an anti-liberation force that collaborated with the Pakistani army, said he had seen Subhan killing people and directing the army to torch villages during the Liberation War in 1971.

Asad, third prosecution witness in the case against Subhan, gave a vivid description how he was forced by the accused to receive training and take part in operations carried out by the army.

"I was forced to join Mujaheed Bahini by the army and Moulana Subhan," the 62-year-old witness told the International Crimes Tribunal-2.

Asad also identified Subhan, who was frequently watching a computer monitor set up inside the dock showing recording of the testimony.

The Jamaat nayeb-e-ameer faces nine charges including genocide and murders committed in Pabna during the war. Subhan, however, pleaded not guilty before the court.

During his 80-minute testimony, Asad, a resident of Joynagar village under Ishwardi upazila in Pabna, said Subhan and the Pakistani army had come to their village around 10:00am on April 15, 1971 and torched houses and killed people.

"Moulana Subhan caught me near my house when I was fleeing. He got me on an [Pakistani] army truck parked on Union Board Road where I saw several army men and four to five detainees," he said.

The witness further said Subhan and the army had carried out huge atrocities until 4:00pm and looted domestic animals before taking him and others to a Pakistani camp set up near the Hardinge Bridge at Pakshi.

"Moulana Subhan lined up all the detainees including me and said, '... I am a Muslim and you too. East Pakistan must be saved by any means. From now on, you are Mujaheed [a man who struggles for the sake of Allah and Islam]," Asad went on saying.

The accused had threatened that those who would not follow him would be killed. "We all agreed for the sake of our life," said Asad, adding, the army started training them up from the next day.

During training, they had regularly witnessed Subhan and the army bringing five to seven detainees near the Hardinge Bridge and killing them after consulting with Major Joytun.

"Moulana Subhan occasionally shot [the detainees] with pistol. Otherwise, the army, who accompanied him, had done it. We [Mujaheeds] were forced to take them [detainees] to the bridge," said Asad.

"I usually had to guard the bridge and that's why could witness the killings."

Asad said he had made several attempts to escape but failed, as the Bangalees were under stringent vigilance.

"Moulana Subhan killed five Bangalee Mujaheeds out of suspicion. I remember four of them -- Hashem, Kashem, Mujibar and Rustam," added Asad.

After a 15-day training, the army accompanied by Subhan had taken them to Sahapur on an operation, he said, adding, they entered the village leaving some of the Mujaheeds including him behind to guard their vehicles.

"Moulana Subhan was carrying a list of people. We heard gunshots and saw fumes after 10-15 minutes," said Asad, adding, "Around 3:30pm Subhan and the army returned with looted domestic animals.

"I heard from the Bangalee Mujaheeds, who took part in the operation, that the army led by Moulana Subhan killed 20-25 peopleâ€¦ The Pakistani army were heard saying how they had tortured women," said Asad.

The witness also said the army had tortured him on November 15-16 as he helped two Mujaheeds escape. The following day Subhan, Khoda Baksh and some other Jamaat leaders appeared.

The witness said Subhan had interrogated him and slapped him to tell the truth but later asked the army to release him as he [Asad] denied the allegation after touching the holy Quran.

He was later included in two operations at Betbaria and Aram Baria, a Hindu-majority village, added Asad.

"During the operations, the army torched houses as per a list of Moulana Subhan and shot whoever came before them," he said.

"I also witnessed how the Pakistani army had raped wives and daughters before their husbands and fathers and shot the raped women," said Asad as he burst into tears. "Subhan Saheb was present with the army at that time."

"Moulana Subhan on several occasions ordered us to identify and torch houses of Awami League leaders, activists and supporters," he added.

The witness said he had escaped on November 28/29 and gone to a freedom fighters' camp and subsequently to India to receive warfare training.

Defence lawyer Shahjahan Kabir asked the witness three questions before the three-member tribunal led by Justice Obaidul Hassan with members Justice Md Mozibur Rahman Miah and Justice Md Shahinur Islam adjourned the proceedings until today.

5 War Crimes Charges Pressed Against Ex-JP MP Jabbar

The Daily Star

May 11, 2014

Prosecution today pressed five charges against former Jatiya Party lawmaker Abdul Jabbar for his crimes against humanity committed during the country's Liberation War in 1971.

Jabbar, as the chairman of Mathbaria Peace Committee, had "played a key role" in the formation of the Razakar Bhahini and had "led the force" in committing crimes in Mathbaria area during the nine-month-long Liberation War.

Prosecution Zahid Imam submitted the charges to the registrar office around 11:15am to place it before the ICT-1.

Investigators, who have found Jabbar's involvement in at least five crimes including genocide, murder and looting, submitted the probe report to the prosecution on April 29.

After probing the allegations against Jabbar, the war crimes investigation agency on April 28 said that it had found evidence of his involvement in at least five crimes against humanity at Mothbaria upazila of Pirojpur during the war.

According to the investigators, Jabbar along with his accomplices forcefully converted 200 Hindus to Islam at Phuljhuri village in the last week of May 1971.

The probe report also cites Jabbar's involvement in killing two freedom fighters in the village.

Apart from that, Jabbar participated in the killing of one person in Phuljhuri and setting fire to 360 houses, the report said.

He and his cohorts on October 6, 1971 detained 37 people of Angulkata and Mothbaria villages of the upazila. Of them, 22 were later killed and the others injured, said Helal, who had also investigated the case against war crimes convict Delawar Hossain Sayedee.

Jabbar's involvement was also found in the killing of 11 people, and looting of and setting fire to 60 houses at Noli village of Pirojpur.

Jamaat's Trial to Create Tribunal History

Dhaka Tribune
By Udisa Islam
May 13, 2014

For the first time in Bangladesh history, the prosecution of the International Crimes Tribunal is ready to deal with the war crimes charges levelled against the Jamaat-e-Islami for its role during the 1971 Liberation War. With this step, Bangladesh is going to reach a milestone in the war crimes trials that began in 2009.

The prosecution is now mainly concentrating on this case and the formal charges may be placed this month. The investigation officer says the journey to prepare the probe report was not so easy.

In the past, seven Nazi organisations, including the Reich Cabinet, Hitler's paramilitary force and Gestapo, and the secret police force of the Nazis, were tried at the historic Nuremberg Tribunal in Germany for war crimes committed during World War II.

The prosecution, however, claims that the case in Bangladesh is different from the Nuremberg Trials in some ways. After facing significant initial challenges, the prosecution thinks they have brought more order to their case. They may seek stern punishment following similar patterns in other international courts.

Jamaat is likely to face charges of committing war crimes, genocide and crimes against humanity, and violation of Geneva Convention 1949, and other international laws. The prosecution may seek declaring it a criminal organisation, imposing a ban on the party and its student body Islami Chhatra Shibir, realising compensation, and slapping fines.

While the activists want a quick trial, they are also concerned about a thorough and proper investigation leading to formal charges. Some legal experts argue that the International Crimes (tribunals) Act 1973 does not have any specific provision on punishment of any organisation.

Prosecutor Tureen Afroz thinks this is been solved. "Section 20 (2) of the ICT Act suggests that the judges can mete out any punishment to a person, if convicted, ranging from death penalty to ban. The definition of 'person' is clearly defined in our 'General Clauses Act.' Here the person means both natural person and legal person. So, Jamaat can be punished under the ICT Act as a legal person," she explained.

Investigation Officer Matiur Rahman said: "We have got adequate declassified information from home and abroad, and witnesses to prove the war crimes allegations against the party. Many of our so called pro-liberation intellectuals have refused to help us, while insiders also tried to discourage us by saying that the Act does not allow to try any party."

The government in February last year amended a provision of the ICT Act to allow trying a group and political party. Earlier, only individuals could be brought under trial.

Jamaat was banned twice during the Pakistan regime, in 1959 and in 1964, for its communal role. It was banned again just after the independence of Bangladesh. But it was allowed to resume politics during the regime of BNP founder Ziaur Rahman.

War crimes activist Shahriar Kabir said: "If the party is charged with war crimes, it would be the first such case in Bangladesh. Trial of Jamaat has been a longstanding demand of the people."

Sculptor Ferdousi Priyabhashini, a Birangona of the war, observed that those who had acted against the nationa's independence, and misused their

position must face trial. "It will be a landmark in our history and consolation for the victims' families."

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NORTH AND SOUTH AMERICA

United States

Schoolgirl Abductions Put Scrutiny on U.S. Terrorism Strategy
New York Times
By Michael R. Gordonmay
May 8, 2014

The abduction of more than 200 schoolgirls in Nigeria has led to new scrutiny of the United States' counterterrorism strategy toward Boko Haram during Hillary Rodham Clinton's tenure as secretary of state.

At the heart of the issue is a debate carried out within the Obama administration on whether it was time to officially designate the group as a "foreign terrorist organization."

Republican lawmakers assert that the delay in making that designation shows that Mrs. Clinton was not firm enough in dealing with Boko Haram.

But some former officials say that the issue is being politicized because of Mrs. Clinton's status as a likely presidential candidate.

The debate took place in 2011 and 2012 amid mounting concern about the group's attacks.

The Justice Department, the F.B.I., American intelligence officials and counterterrorism officials in the State Department favored the designation because of Boko Haram's role in the growing violence in Nigeria and because of intelligence reports that some of its members had links to Al Qaeda in the Islamic Maghreb. Such a step would have made it illegal for any individual in the United States to provide "material or resources" to the group and, proponents say, would also have focused international attention on the danger the group posed.

But Johnnie Carson, who was the assistant secretary of state for African affairs from 2009 to 2013, said in an interview on Thursday that he had opposed making the designation "for six or seven different reasons."

Mr. Carson said he was concerned that the move would generate publicity for the group and help it attract support from other extremists. He said he was also worried that the designation might legitimize a heavy-handed crackdown by Nigeria's security forces at a time when American officials were urging them to avoid human rights abuses. "It would have aligned us with a flawed Nigerian security strategy," Mr. Carson said. There was concern that the

designation might prompt the group to attack American interests in the region.

The Nigerian government also strongly opposed the move, fearing it would raise Boko Haram's standing. After extensive debate, a compromise was reached: Three leading members of Boko Haram were designated as foreign terrorists, but the group as a whole was not labeled as such.

Mr. Carson declined to comment on Mrs. Clinton's role, but he said that all Obama administration officials who were "part of the decision-making process" agreed to the compromise. A spokesman for Mrs. Clinton did not respond to a request for comment.

In November 2013, the Obama administration finally decided to pin the terrorist label on Boko Haram. By that time, Mr. Carson had retired from the State Department and John Kerry was secretary of state. When the move was announced, a senior administration official told reporters that the designation would discourage volunteers and would "notify the world" that the United States and Nigeria were combating "extremist violence."

Boko Haram, the official added, is "responsible for thousands of deaths since its conception in 2009, including large-scale attacks against Muslim and Christian religious communities, and women and children." Daniel Benjamin, the State Department's counterterrorism official from 2009 to 2012, said the delay had not impeded efforts to work with the Nigerians.

"Designation was one of many tools and not the most urgently needed one in dealing with the Nigerians," Mr. Benjamin said in a telephone interview. "What was more important was strong engagement in the areas of law enforcement and counterterrorism."

U.S. Mission in Place to Aid in the Search for 250 Schoolgirls Abducted in Nigeria
The Washington Post
By Anne Gearan and Ernesto Londoño
May 12, 2014

The Obama administration is conducting surveillance flights over Nigeria in the search for more than 250 abducted schoolgirls and is considering the deployment of drones to the region to bolster the effort, officials said Monday.

Additionally, the administration has all but one of the 27 experts and security officials assigned to the mission already in place in the Nigerian capital, Abuja, officials said.

White House press secretary Jay Carney said the team includes five State Department officials, 10 Pentagon planners and advisers who were already in Nigeria, and seven more sent from the U.S. military's Africa Command, along with four FBI experts in safe recovery, negotiations and prevention of kidnappings.

"The scope of that assistance has been outlined, and it includes military and law enforcement assistance, advisory assistance, as well as intelligence, surveillance and reconnaissance support," Carney said. Although he would not provide much detail, the summary was the clearest statement yet that the United States will use its own satellite or other surveillance data and provide intelligence analysis for the search effort, which critics of the Nigerian government contend has been lackadaisical and poorly resourced.

"We have shared commercial satellite imagery with the Nigerians and are flying manned [intelligence, surveillance and reconnaissance] assets over Nigeria with the government's permission," a senior administration official said Monday evening.

A senior Pentagon official said that the United States has not mobilized drones to aid the search but that commanders in Africa are exploring whether to do so. The official, who like the other administration officials was not authorized to speak about the matter publicly, said drones in the region would be diverted from the hunt for warlord Joseph Kony, the leader of the Lord's Resistance Army.

The United States has drones at three military outpost in Africa - in Djibouti in the eastern Horn of Africa, where both armed and unarmed aircraft are based, and in Ethiopia and Niger, which shares a long border with Nigeria.

The U.S. Air Force began using unarmed drones from Niger early last year on surveillance missions in search of al-Qaeda fighters and guerrillas from other groups in north and west Africa. The United States also is likely to provide help monitoring and intercepting communications among members of Boko Haram, the radical Islamist group that seized the girls.

U.S. officials cautioned that the mission to find the schoolgirls would not be easy. "When we talk about assisting in the effort to locate the girls, we are talking about helping the Nigerian government search an area that is roughly the size of New England," Carney said.

"So, this is no small task. But we are certainly bringing resources to bear in our effort to assist the government." Asked about new video purporting to show some of the abducted teenagers, Carney said the United States has no reason to question its authenticity.

"Our intelligence experts are combing over it, every detail of it, for clues that might help in the ongoing efforts to secure the release of the girls," he said. State Department spokeswoman Jen Psaki suggested that the United States would oppose the payment of any ransom for some or all of the girls, but she said the Nigerian government is making its own decisions.

The head of Boko Haram suggested over the weekend that the group would negotiate for ransom or trade. "The United States policy...is to deny kidnappers the benefits of their criminal acts, including ransoms or concessions," Psaki said.

Muslim Preacher Spars with Prosecutors at Terrorism Trial
Wall Street Journal
By Charles Levinson
May 13, 2014

Abu Hamza al-Masri, the Muslim preacher on trial in Manhattan, sparred with government prosecutors Tuesday in a combative cross-examination that marked the climax of his month long terrorism trial.

Assistant U.S. Attorney John P. Cronan asked Mr. al-Masri about scores of old videos, sermons, books and interviews showing the Egyptian-born British cleric comparing non-Muslims to pigs and cows, sanctioning violence against them, and praising Osama bin Laden.

Mr. al-Masri shot back, chastising Mr. Cronan for cutting him off midsentence and accusing him of taking quotes out of context and distorting facts.

Mr. al-Masri, who has a thick gray beard, a shock of white hair and hooks for hands, delivered a number of one-line barbs at Mr. Cronan that elicited chuckles from courtroom observers.

At one point the 56-year-old cleric fired a number of questions back at Mr. Cronan, who seemed briefly knocked off balance. After Mr. al-Masri appeared on the offensive during the first hour and a half of testimony, Mr. Cronan huddled during a midmorning break with Brendan McGuire, co-chief of the terrorism unit in the Manhattan U.S. attorney's office, who had been watching from the benches.

Mr. McGuire pumped his fist and jabbed his finger at Mr. Cronan's notebook as he spoke to his colleague. Mr. al-Masri's case is the second of three major terrorism trials slated this year for the federal courthouse in Manhattan.

Underscoring its importance, U.S. Attorney Preet Bharara and the chief counsel for the U.S. attorney's office, Joon Kim, made a rare appearance in court Tuesday to watch the cross examination.

At stake is the government's record in prosecuting cases through civilian courts that some critics say should be left to the military to handle. In March, bin Laden's son-in-law Sulaiman Abu Ghaith was convicted in the same courthouse of conspiring to kill Americans and providing material support to terrorists.

The government has charged Mr. al-Masri with 11 terrorism-related counts, including helping to kidnap 16 Western tourists in Yemen in 1998, dispatching operatives to fight with al Qaeda in Afghanistan and trying to establish a terrorist training camp in Bly, Ore. Closing arguments are expected Wednesday and then the case will go to the jury. Mr. al-Masri faces a maximum sentence of life in prison if convicted.

In court Tuesday, Mr. al-Masri called the accusations against him "hallucinations." He conceded he bought a satellite phone for the kidnappers, who were members of the Yemeni insurgent group the Islamic Army of Aden.

But Mr. al-Masri said he bought the phone because he was serving as the group's London-based spokesman, and the group was still legal in U.K. and the U.S. at the time. He said he had no prior knowledge of the kidnapping and tried to help to negotiate the hostages' release after it happened. "I did more for those hostages than the U.S. government," Mr. al-Masri said.

"The U.S. government only cared about those hostages in 2003, when I was campaigning against the Iraq war." Asked by Mr. Cronan about his alleged ties to various other alleged terrorists, Mr. al-Masri said that just because someone had attended his London mosque didn't make Mr. al-Masri responsible for their actions.

"Would you charge a bus driver if one of his passengers goes and does something?" he asked.

At another point, after Mr. Cronan rattled off a series of questions in succession, Mr. al-Masri scolded him. "This is many questions. Which one? Try to concentrate. One at a time," he said to snickers in the gallery.

As Mr. Cronan pushed Mr. al-Masri about his past support for bin Laden and violent jihad, the prosecutor appeared to regain the upper hand. Mr. Cronan wrapped up his cross-examination with a final video, showing a much younger Mr. al-Masri speaking to a group of followers. "Sometimes you're allowed to lie to the infidels," Mr. al-Masri said in the video. "No further questions," Mr. Cronan said.

Syrian Opposition Cites 'Significant Headway' After Meeting with Obama in Washington Washington Post

The Washington Post
By Karen DeYoung
May 13, 2014

Ahmad al-Jarba, head of the Syrian Opposition Coalition, met with President Obama on Tuesday at the end of a lengthy Washington visit during which opposition leaders said they had laid the groundwork for more substantive U.S. assistance.

The administration continued to resist opposition entreaties to supply surface-to-air missiles for use against the Syrian air force. But, said Jarba adviser Oubai Shahbandar, "we've made significant headway and laid the pillars for much more significant discussions."

In meetings over the past week with top officials at the departments of State, Defense and Treasury, as well as at the White House and Congress, "we made very clear that we are prepared for the long fight," Shahbandar said. The coalition's Washington visit comes at a low point for the Syrian opposition, and for efforts by the United States and its allies to boost the three-year fight to oust President Bashar al-Assad. France, whose foreign minister, Laurent Fabius, was also visiting Washington on Tuesday, charged that Assad's forces have deployed "chemical agents" on at least 14 occasions since October, after Assad signed a convention banning their use and agreed

to allow the international community to remove and destroy his declared chemical weapons.

The Organization for the Prohibition of Chemical Weapons (OPCW) said two weeks ago that it had removed 92.5 percent of those weapons, primarily nerve agents, which are to be destroyed by the end of June. Syria has said that the remaining 7.5 percent are located in an area outside Damascus where security concerns have prevented access and safe transport. But Fabius said the Assad "regime is still capable of producing chemical weapons and is determined to use them."

He cited what he called "credible witnesses" saying that chemicals continue to be used, a reference to reports that Syria has used toxic chlorine gas against opposition-held areas. The administration has declined to confirm or quantify new chemical use by Assad, saying it is waiting for a report by OPCW inspectors. Human Rights Watch separately released a report Tuesday saying that "evidence strongly suggests that Syrian government helicopters dropped barrel bombs embedded with cylinders of chlorine gas on three towns in northern Syria in mid-April." Syria's alleged use of chlorine is on the agenda for discussion at a high-level meeting of opposition supporters that Secretary of State John F. Kerry is scheduled to attend in London on Thursday.

Meanwhile, Lakhdar Brahimi, the U.N. and Arab League envoy to Syria, resigned Tuesday after trying for nearly two years to bring the Syrian conflict to a negotiated end. His resignation was announced by U.N. Secretary General Ban Ki-moon, who said Brahimi had faced "almost impossible odds" in trying to bring Assad's government to the table. Ban also blamed "the divided world ... within the United Nations and in the region" for the lack of progress.

Russia, Assad's primary arms supplier and diplomatic backer, has vetoed three U.N. Security Council resolutions designed to bring pressure on the Syrian government.

Brahimi spoke before delivering his final briefing to the council in a closed-door session.

With Ban at his side, he said the occasion was "not very pleasant for me. It's very sad that I leave this position and leave Syria behind in such a bad state. "I'm sure that the crisis will end," Brahimi said. "The question is, how many more dead? How much more destruction is there going to be before Syria becomes again the Syria we have known?"

An estimated 150,000 Syrians have been killed since the anti-Assad uprising began in March 2011. According to the United Nations, more than 9 million Syrians have fled their homes, many of them going to refugee camps in neighboring countries.

"Brahimi did not fail," Kerry said at a State Department news conference with his Italian counterpart, Federica Mogherini, also on a Washington visit. "It's the fault of a party, Assad ... who absolutely refused to negotiate."

Kerry also indirectly blamed Russia, which more than a year ago signed on to an agreement to support negotiations with the opposition for a transitional government in Syria. At the time, he indicated, the Russians believed that Assad was losing the war.

But shortly thereafter, he said, Islamist extremist groups began to gain power within the opposition and fighting broke out between them and U.S.-backed moderate forces.

At the same time, Iran and Lebanese Hezbollah fighters became actively involved on Assad's side. "The dynamic shifted on the ground," Kerry said.

Climate Change Poses Growing National-Security Threat, Report Says
Time Magazine
By Michelle Arrouas
May 13, 2014

A new report published by the Center for Naval Analyses Military Advisory Board this week finds that climate change is a "catalyst for conflict" and a "threat multiplier," posing a growing national security threat to the U.S.

Climate change does not only threaten the environment but also U.S. national security, according to a new study.

Global warming presents the U.S. with several security threats and has led to conflicts over food and water because of droughts and extreme weather, says the report, which was written by a dozen retired American generals and published by the Center for Naval Analyses Military Advisory Board on Tuesday.

"Climate change can act as a threat multiplier for instability in some of the most volatile regions of the world, and it presents significant national security challenges for the United States," says the report, adding that problems will be felt "even in stable regions."

The U.S. military should plan to help manage catastrophes and conflicts both domestically and internationally, it says, raising concerns regarding a wave of refugees fleeing rising sea levels.

"These effects are threat multipliers that will aggravate stressors abroad, such as poverty, environmental degradation, political instability and social tensions - conditions that can enable terrorist activity and other forms of violence," the report states.

The authors of National Security and the Threat of Climate Change urge U.S. policymakers to act quickly. "The increasing risks from climate change should be addressed now because they will almost certainly get worse if we delay," they say.

Hagel, in Saudi Arabia, Tells Arab States Not to Fear Nuclear Talks with Iran
The Washington Post

By Ernesto Londoño
May 14, 2014

As Washington's negotiations with Tehran over its nuclear program entered a crucial stage this week, Secretary of Defense Chuck Hagel told Arab defense chiefs Wednesday that the United States would keep a robust military presence in a region where many fear the prospect of a nuclear-armed Iran.

"While our strong preference is for a diplomatic solution, the United States will remain postured and prepared to ensure that Iran does not acquire a nuclear weapon," Hagel told defense ministers from the Gulf Cooperation Council, a grouping of six Arab states bordering the Persian Gulf.

"These negotiations will under no circumstance trade away regional security for concessions on Iran's nuclear program."

Hagel's visit to this Red Sea city in western Saudi Arabia was meant to send a signal as diplomats from the United States and five other world powers engage with their Iranian counterparts in Vienna this week on the outlines of a deal under which Tehran would curtail its uranium-enrichment activities, which U.S. officials fear could lead to development of nuclear weapons.

Sunni Arab states have long feared that a nuclear-armed Iran could significantly boost the Shiite Islamic Republic's clout in a region increasingly divided along sectarian lines.

As the negotiations with the world powers have tentatively advanced, though, Saudi Arabia appears increasingly inclined to explore closer ties with Tehran.

On Tuesday, the Saudi foreign minister announced that he has invited his Iranian counterpart to visit.

Speaking to reporters after the closed-door meeting with defense chiefs from Saudi Arabia, Qatar, the United Arab Emirates, Bahrain, Kuwait and Oman, Hagel told reporters that he had urged his counterparts to coordinate more closely on the aid that foreign governments are providing to Syrian rebels.

Washington has expressed concern that Qatar and Saudi Arabia are arming extremists.

"We agreed that our assistance must be complementary and that it must be carefully directed to the moderate opposition," Hagel said. Leaders from Saudi Arabia and other Gulf states refrained from making substantive public remarks.

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South & Central America

Chile

Court Investigates Parliamentarian for Killing Anti-Pinochet Guerillas

The Santiago Times
By Amelia Wade
May 14, 2014

A former army commander-cum-congressman says he will lodge an appeal to the Supreme Court after local judges approved an investigation into his alleged role in the killing of three anti-Pinochet guerrillas committed during the military dictatorship.

On Monday, the Valdivia Appeals Court announced it had unanimously agreed that there was enough evidence to investigate Dep. Rosauro Martínez Labbé, for his involvement in three historic murders.

The decision will strip the center-right National Renewal (RN) deputy of his congressional immunity unless he challenges the ruling in the Supreme Court by Saturday.

Martínez, who proclaims his innocence, says he has every intention of doing so. The case involves the deaths of three Revolutionary Left Movement (MIR) members, killed on Sept. 20, 1981, during the dictatorship of Gen. Augusto Pinochet.

The bodies of Eugenio Monsalve Sandoval, Próspero Guzmán Soto and Patricio Calfuquir Henríquez were found in the field of Remeco Alto, a short distance from Neltume, in the foothills of Valdivia.

Martínez is alleged to have ordered the killing of the men, who were among a group of a dozen MIR militants attempting to organize a guerrilla resistance against Pinochet's regime.

The Valdivian court accepted the arguments of Judge Yévenes Emma Diaz, who is investigating human rights violations, and said there was enough evidence to investigate Matínez for his participation in the killings via the decisions he made as company commander in the Eighth Battalion under the Fourth Army Division.

Martínez emphatically denies responsibility for the crimes.

"I want to express my peace of mind and innocence and like I have always said, I respect the decisions of justice and I will make use of the processes that it gives me," Martínez said.

Details of the case were made public May last year when lawyers Magdalena Garcés, Boris Paredes and Eduardo Contreras filed accusations with Valdivia Appeals Court.

Alicia Lira, president of the Association of Victims of Political Executions (AFEP), said Martínez had been avoiding facing justice since then.

"We are confident that the Supreme Court will reaffirm the Valdivia Appeals Court ruling," Lira said. "For months we have pursued this case and they have used all the tricks, even the presidential campaign, to delay his facing justice."

Columbia

Colombian Police Arrest Paramilitary Leader "Movil 5"
BBC
May 13, 2014

Police in Colombia have arrested a senior paramilitary known as Movil 5. The man, whose real name is Manuel Salvador Ospina Cifuentes, was on the run after being found guilty of the massacre in 1990 of dozens of villagers in Pueblo Bello village. He is also suspected of killing Carlos Castano, the leader of Colombia's largest paramilitary group, the AUC. The AUC demobilised in 2005 but many of their members went on to join new criminal groups.

The paramilitaries were formed in the 1980s by cattle ranchers to counter Marxist rebel groups that have been battling the government for five decades.

Ospina Cifuentes was arrested in the city of Medellin after a lengthy surveillance operation. He started his criminal career as a security guard for Carlos Castano's brother, Fidel.

In 1990, Ospina Cifuentes was part of a gang of men who entered the village of Pueblo Bello in northern Antioquia province and killed 43 people.

The gang said the massacre was in revenge for the alleged theft by the villagers of 43 cows belonging to Fidel Castano. After the disappearance of Fidel Castano in 1994, Ospina Cifuentes transferred his allegiance to another Castano brother, Vicente. Vicente Castano is on the run from the police and believed to be heading a new criminal gang.

Prosecutors say that in 2004, acting on Vicente's orders, Ospina Cifuentes was one of 30 men who cornered and shot dead Carlos Castano at his hideout in the north of the country.

Analysts believe the two brothers had fallen out over their group's involvement in drug trafficking. Carlos Castano was thought to be more interested in the paramilitaries' role in fighting Colombia's left-wing rebels, while Vicente is said to have been lured by the profits of the cocaine trade.

Paramilitary leader Carlos Castano disappeared in 2004, and his body was found two years later.

With Carlos Castano moreover involved in negotiations with the Colombian government over the AUC's eventual demobilisation, his brother and other

senior paramilitaries feared he might reveal the location of lucrative drug routes in exchange for a more lenient sentence.

His body was found in a shallow grave in 2006. Vicente Castano has been sentenced to 30 years in prison for ordering his brother's murder, but his whereabouts are unknown. Some in the security forces believe he has gone on to lead a criminal gang called the Black Eagles.

Ospina Cifuentes is expected to be charged with carrying out Carlos Castano's murder.

He was already sentenced in absentia to 30 years in jail for his role in the Pueblo Bello massacre.

The Colombian government is currently in peace negotiations with the country's largest left-wing rebel group, the Farc. Government negotiators say they have learned from "mistakes" in the AUC's demobilisation and will invest in the reintegration of the rebels to ensure they do not go on to join criminal gangs if a peace deal is signed.

Venezuela

Venezuela Detains Dozens of Anti-Government Protesters
BBC
May 14, 2014

Police in Venezuela have detained at least 80 demonstrators who were demanding the release of those arrested in recent anti-government protests.

Hundreds of people, mostly students, had marched peacefully through the streets of the capital Caracas.

But security forces later clashed with a group of demonstrators who threw stones and home-made explosives, and tried to erect barricades.

More than 40 people have been killed during three months of unrest. Wednesday's march was called by university students to demand the release of more than 200 people who were detained after security forces broke up protest camps last week.

The government said they were being used as bases to launch "violent attacks" and to hide "drugs, weapons, explosives and mortars".

But a university student at the march, Alex Gomez, rejected the accusations, saying "there was never a problem due to drugs, weapons, or alcohol."

"We are demanding that they show us the reasons why they arrested them," he told the Associated Press news agency. Anti-government protesters shout from a truck after being detained in Caracas, May 14, 2014.

A student leader, Juan Requesens, vowed they would continue demonstrating despite the arrests.

"The government is trying to suppress us by continuing to detain students. We will not bow down and will continue our protests," he told the Efe news agency.

Since February 12, Venezuela has seen a wave of violent demonstrations that were first triggered by discontent over high inflation, rampant crime and food shortages.

The government has labelled the protesters "fascist agitators" and accused them of fomenting a coup against the left-wing President Nicolas Maduro.

In a report published last week, the pressure group Human Rights Watch accused Venezuelan security forces of illegally detaining and abusing protesters.

The latest clashes come a day after the Venezuelan opposition threatened to boycott ongoing talks with the government.

The two sides began meeting last month in an attempt to find a way out of the crisis.

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TOPICS

Terrorism

ritain Expands Power to Strip Citizenship from Terrorism Suspects
The New York Times
By Katrin Bennhold
May 14, 2014

Britain has passed legislation that allows the government to strip terrorism suspects of their citizenship even if it renders them stateless, taking the country's already sweeping powers to revoke nationality a step further.

After four months of wrangling, the House of Lords, the Parliament's upper chamber, approved on Monday a clause in a new immigration bill that removes a previous restriction on leaving individuals without citizenship. The bill became law on Wednesday, after receiving royal assent.

Britain has been one of the few Western countries that can revoke citizenship and its associated rights from dual citizens, even native-born Britons, if they are suspected or convicted of acts of terrorism or disloyalty.

The government has stepped up its use of this tactic in recent years. In two cases, suspects have subsequently been killed in American drone strikes.

The new rules will broaden these so-called deprivation powers to include Britons who have no second nationality, provided that they were naturalized as adults. If the home secretary deems that their citizenship is "seriously prejudicial to the vital interests of the United Kingdom," it can be taken away, effective immediately, without a public hearing.

A suspect whose citizenship rights have been stripped has 28 days to appeal to a special immigration court. Earlier this year, lawmakers in the upper house rejected a version of the provision, questioning its effectiveness in improving national security and voicing concerns about the moral implications of leaving people without the basic rights associated with citizenship.

But after a number of concessions by the government, the clause was approved by 286 votes to 193. Home Secretary Theresa May has agreed that the new power should be reviewed every three years by a government-appointed expert and said she would use the provision only if she had "reasonable grounds for believing" a suspect is able to obtain the citizenship of another country.

Some lawmakers questioned whether the provision would work in practice. "Would another country seriously consider giving nationality, even to someone who might have the ability to apply for nationality of that country, if it knew that British citizenship had been removed on the grounds that the person was believed to be in some way linked to, or to condone, international terrorism?" asked Helena Kennedy, a member of the House of Lords for the opposition Labour Party.

Under previous legislation, 42 people since 2006 have been stripped of their British citizenship, 20 of them last year, according to a freedom of information request filed by the Bureau of Investigative Journalism, a research organization at City University London that first drew attention to the practice in December 2012.

The new legislation appears to be inspired in part by a specific case in which the government did not get its way.

A spokesman for the Home Office, John Taylor, said this week that the case of Hilal al-Jedda, an Iraqi-born naturalized Briton who lost his British nationality in 2007 after being detained in Iraq on suspicion of smuggling explosives, had highlighted a "loophole" in the law.

Out of 15 appeals, the case of Mr. Jedda is the only one to have succeeded. Britain's Supreme Court ruled in October that Mr. Jedda could not be deprived of his British nationality because it would make him stateless: Iraq bans dual citizenship and canceled Mr. Jedda's passport in 2000 when he was naturalized in Britain.

The British government was forced to reinstate his citizenship on Oct. 9, 2013. But on Nov. 1, Mr. Jedda was stripped of his nationality a second time, and in January the Home Office rushed before Parliament the amendment allowing deprivation even if it results in statelessness.

alaysian Police Arrest East African Terrorist Suspect on Interpol List
The Wall Street Journal
By Celine Fernandez
May 8, 2014

Kuala Lumpur, Malaysia-Police here on Thursday arrested a suspected East African terrorist who they said was on Interpol's most-wanted list.

The news comes one week after Malaysian police said they had detained 11 people suspected to have what they said were terrorist links and who were plotting terrorist activities.

Police didn't say whether the suspects in the separate arrests might be affiliated.

Last week, a senior government official said Malaysia is taking steps to make sure it doesn't become a place terrorists use to recruit and train others.

"If this is not nipped from the beginning, we are worried that it will involve the political stability of Malaysia," Ahmad Zahid Hamidi, the minister of home affairs, had said.

"We are firm in taking this action because we do not want Malaysia to be the training nest of the terrorist.

We do not want Malaysia to be considered as the launchpad for terrorists in Southeast Asia or even the entire world," he had added.

Deputy Inspector General of Police Mohd Bakri Zinin said Thursday's arrest was of someone who allegedly is involved in the activities of the al-Shabaab militant group in East Africa.

"Police are investigating the subject's activities in Malaysia to identify any al-Shabaab terrorist elements which might be hiding or carrying out activities that might jeopardize the safety of Malaysia," he said. Al-Shabaab is an al-Qaeda-linked jihadist group based in Somalia.

It is waging an insurgency against the Somali government but has been operating in other countries, such as Kenya.

Mr. Bakri said the suspect in this latest arrest was a 34-year-old captured in a special operation by the country's antiterrorist brigade in the state of Selangor.

The suspect, who wasn't identified, will be investigated under the Security Offenses (Special Measures) Act of 2012.

The act allows police to detain people for up to 28 days during investigations into internal security issues, including public order, acts of terrorism, sabotage and espionage.

BI Agent Arrested in Pakistan on Weapons Charge
The Washington Post
By Tim Craig and Adam Goldman
May 7, 2014

An FBI agent is being held on anti-terrorism charges in Pakistan after authorities found ammunition in a bag as he boarded a plane in Karachi, Pakistani and U.S. officials said Tuesday.

Joel Cox, 32, was detained by airport police in Karachi about 4 p.m. Monday when he tried to board a Pakistan International Airlines flight to Islamabad.

He was in possession of 15 bullets and a magazine for a 9mm pistol, police officials said. On Tuesday, he appeared in court on charges that he had violated local anti-terrorism laws that prohibit the carrying of weapons or ammunition on a commercial flight.

A judge ordered that Cox be detained until at least Saturday so Pakistani security officials can investigate the matter. The American's arrest was news across Pakistan, and one television station aired footage of Cox sitting in a jail cell in Karachi, the country's largest city and one of its most dangerous . U.S. officials in Washington confirmed that the agent, who is assigned to the FBI Miami Field Office, was in Pakistan on temporary duty.

They had earlier requested that Cox's name be withheld, citing the sensitivity of the situation, but his name has now been widely publicized in Pakistan.

The FBI did not return calls Wednesday morning. A U.S. official with knowledge of the case said the agent was not armed and had apparently forgotten about the loaded magazine in his bag.

Cox was in Pakistan as part of a multi-agency effort to help the Pakistanis investigate corruption, the official said. Reached by phone, Cox's father said his son was scheduled to be in Pakistan for about three months for "office-type work" with "a non-FBI-type" entity.

An FBI spokesman in Miami referred questions about the arrest to the State Department. Meghan Gregonis, a spokeswoman for the U.S. Embassy in Islamabad, said U.S. officials are working to resolve the matter.

"We are aware of the reports, and we are coordinating closely with Pakistani authorities on the matter," Gregonis said. State Department officials also voiced optimism that the matter can be quickly resolved.

But a Pakistani Foreign Ministry official, speaking on the condition of anonymity to discuss the sensitive subject, said officials are trying to gather more information about the agent's job in Pakistan.

It's common for FBI agents to be assigned overseas, where they often work out of U.S. consulates or embassies.

One former FBI agent who used to work in Pakistan said agents are allowed to carry weapons there.

But the former agent, who spoke on the condition of anonymity to be candid, said they are not allowed to carry weapons onto civilian aircraft.

In recent years, several Americans have been detained in Pakistan on charges that fueled diplomatic tension between the two countries. In the most high-profile case, a CIA contractor was detained for nearly two months in 2011 in the killing of two men in Lahore.

Raymond A. Davis, who was part of a secret CIA team that had been operating in the eastern city, argued that he had acted in self-defense after the two men tried to rob him.

The incident sparked violent protests across Pakistan and greatly strained bilateral relations. Pakistan initially rebuffed requests from senior Obama administration officials that Davis be granted diplomatic immunity.

But he was eventually freed after arrangements were made to compensate the relatives of the victims.

At the time, anti-American sentiment was growing in Pakistan because of U.S. drone strikes and disagreements over whether the Pakistani military was doing enough to combat terrorism.

On Monday, the Pakistani military announced that the U.S. military was being granted rare permission to use Pakistani airspace so it could more safely transport vehicles and other supplies from Karachi to Afghanistan.

losing Arguments Made in Mustafa Kamel Mustafa Terrorism Trial
CBS New York
May 14, 2014

New York- A prosecutor warned jurors Wednesday in closing arguments at a New York terrorism trial not to be fooled by the testimony of the defendant, a London imam charged with supporting al Qaeda. Then a defense lawyer urged them to put emotions aside and realize his client is not guilty.

As WCBS 880's Irene Cornell reported, the contrasting accounts were offered Wednesday at the trial of Mustafa Kamel Mustafa, who's accused of conspiring to support al Qaeda and aiding the kidnappers of 16 tourists in Yemen in 1998.

Assistant U.S. Attorney Ian McGinley said the 55-year-old Mustafa lied from the witness stand in a desperate attempt to separate himself from the kidnappers and his top two lieutenants, who traveled to Bly, Ore., to set up a jihad training camp. "But these people are his followers," the prosecutor said.

"He's the one common denominator in this criminal conduct spanning the globe."

Defense attorney Jeremy Schneider said prosecutors took Mustafa's words out of context.

The defense attorney asked whether Mustafa, a man who spent decades ranting against America and its policies, get a fair policy from a jury in New York, in the shadow of the World Trade Center attacks. Mustafa, also known by the aliases Abu Hamza and Abu Hamza al-Masri, took the stand, denying he had any role in the training camp or abductions, in which four hostages were killed during a gunfight between the kidnappers and Yemeni soldiers.

"I'm no stranger to prison," the defendant said last week.

"If my freedom comes at the expense of my dignity and my beliefs, then I don't want it."

Mustafa has one eye and claims to have lost his hands fighting the Soviets in Afghanistan.

The trial of Mustafa comes weeks after a jury in Manhattan convicted Sulaiman Abu Ghaith, Osama bin Laden's son-in-law and al Qaeda's spokesman after the Sept. 11 attacks, of charges that will likely result in a life sentence.

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Piracy

Piracy

Pakistan, UAE to Fight Terrorism, Smuggling and Piracy
The Gulf Today
May 14, 2014

DUBAI: Ambassador of Pakistan Asif Durrani has said that the recently concluded joint naval exercise between Pakistan and United Arab Emirates "Nasr Al Bahr" signifies the resolve of the two brotherly countries to fight against terrorism, smuggling, piracy and other infringements of international law.

He was addressing a reception attended by Col Abdullah Yousaf Abdullah Al Hamadi, Deputy Director Operations and Training of UAE Navy at the PNS

Tippu Sultan, officers of UAE navy, diplomats and distinguished members of the expatriate Pakistani community.

The ambassador said that the visit of Pakistan Naval Ship was a manifestation of the close brotherly, diplomatic and military relations between the both countries.

He stated that navies of Pakistan and UAE periodically conduct joint exercises to ensure stability of the region.

PNS Tippu Sultan arrived at Port Rashid, Dubai on a four-day goodwill visit from May 9 to 13.

Ambassador Durrani mentioned in his speech that Pakistan and UAE Navies had very recently concluded a bilateral exercise "Nasr Al Bahr" in Arabian Sea from April 20 to 26.

The exercise was aimed to improve interoperability for strengthening naval cooperation and to attain high quality of training with maximum tactical interaction, he elaborated.

omali Piracy Has Dramatically Dwindled
Middle East Online
By Aymeric Vincenot
May 12, 2014

Off the coast of Somalia, a sailor on board the French ship Sirocco observes two dhows through binoculars, establishing they are both bona fide fishing vessels.

If the coast of the autonomous region of Puntland is still home to pirates, they take to the seas a lot less frequently than they used to.

The presence of an international armada and the deterrents put in place by shipping companies have reduced piracy off the Somali coast and in the Gulf of Aden to practically nothing.

But the threat is still very present. According to the European anti-piracy fleet Atalanta, the last capture of a major vessel by pirates dates back to May 2012.

Since then several vessels have been attacked or targeted but the pirates have not actually managed to seize any of them. They have managed to seize a handful of dhows, with the aim of using them as mother ships for launching attacks on other vessels.

But that booty pales into insignificance compared to vessels seized when piracy was at its peak: catches in those days included two supertankers, each transporting close on two million barrels of crude oil and a Ukranian cargo ship loaded with arms, notably tanks.

The Sirocco has not made any major catches either in its four months as Atalanta's flagship -- just five pirates arrested in mid-January on board an Indian dhow which they had seized in a vain attempt to board a tanker. Since then the ships that make up Atalanta have confined themselves to patrolling, keeping a watchful eye on the zone and helping any vessels in difficulty.

A South Korean fisherman, injured in a fishing accident underwent surgery on one of Atalante's vessels.

"The economic model of piracy has been broken," explained Etienne de Poncins, the head of EUCAP-Nestor, a European Union mission whose aim is to beef up the capacity of the countries in this zone (Somalia, Djibouti, Kenya, Seychelles and Tanzania) and enable them to carry out surveillance of their own territorial waters.

When Somali piracy was at its peak in 2011, the International Maritime Bureau (IMB) counted 237 attacks attributed to Somali pirates in the Indian Ocean, from the Somali coast across the Sea of Oman. In 2013 the IMB recorded only five attacks, all of which failed.

"At sea the phenomenon is under control. But the pirates are still there.

They can be seen on the coast," warned de Poncins. By arresting numerous pirates over the past few years, Atalanta and its allies -- NATO, China and Japan, which have all deployed considerable means in the region, a shipping route crucial for world trade -- have had a very dissuasive effect.

A raft of measures taken by the shipping sector have also contributed to the decline of piracy: the presence of armed guards on board, the use of barbed wire, an increase in navigation speeds, navigating as far away from the coast as possible.

Indeed experts note that pirates have never managed to seize a vessel protected by armed guards or sailing at a speed of more than 18 knots. But such measures are expensive.

The World Bank noted that "piracy imposed a hidden tax on world trade". "Piracy costs the global economy roughly US$18 billion a year in increased trade costs - an amount that dwarfs the estimated $53 million average annual ransom paid since 2005," the bank said in a 2013 report. "It's expensive, so the day when the shipping companies say 'That's enough' the whole thing can kick off again quite quickly," warned de Poncins.

And given that attacks are becoming rare, ship owners and captains are starting to let their guard down, EU Naval Force officials say, reporting that ships are again navigating at slower speeds and sailing closer to the coast in order to save fuel.

"We are becoming victims of our own success," said Lieutenant Michael Quinn of Atalanta, adding however: "the conditions on the Somali coast have not changed and industry must not relax".

The EU Naval Force's mandate applies only to the sea; it is not authorised to launch land attacks on the pirates who still control, notably in Puntland, large sections of the Somali coast.

Clan militia, pirate networks and criminal gangs share power in this country deprived of an effective government since 1991. The fact that Somali pirates control the coast means they can bring their booty ashore, complete with cargo and crew, making rescue operations very difficult.

The mission of EUCAP-Nestor, which complements that of Atalanta, is therefore to "go ashore and train coast guards so that the countries of the region can be in a position to manage and control their maritime waters, but also to help them put legislation in place," de Poncins said.

Somalia: Puntland Sea Pirates Sentenced 41 years
Geeska Afrika
By Sven Pohle
May 14, 2014

Norfolk (HAN) May 14, 2014. By Tim McGlone, The Virginian Pilot. The United States federal judge sentenced a convicted Somali pirate to 41 years and half in prison after rejecting a prosecutor's call for a mandatory life prison term.

Mohamed Ali Said, 30, was convicted along with five other Somali men of piracy and related charges in the April 2010 attack on the dock landing ship Ashland.

The government will likely appeal.

U.S. sentencing law calls for a mandatory life prison term for anyone convicted of piracy. The USA Attorneys for Mr, Said and the other five argued that the mandatory life prison term violates the Constitution's ban on cruel and unusual punishment.

Jackson agreed and is sentencing all five today and Thursday. Assistant U.S. Attorney Ben Hatch argued that life in prison was appropriate, calling the attack extremely harsh and heinous and adding that Said has shown no remorse or acceptance of responsibility.

"Obviously the court has a different view of matters," U.S. District Judge Raymond A. Jackson responded. Said's attorney said his client had nothing to say. Said had previously argued that he was not a pirate and was working as a smuggler when the skiff he was on approached the Ashland off the Somali coast.

Prosecutors said the Somalis mistook the Ashland for a commercial vessel when they opened fire on it in the pre-dawn darkness in an attempt to take its crew hostage in exchange for ransom.

One of the Somalis admitted that was their plan. No sailors were injured, but a seventh Somali was killed when the Ashland returned fire with its 25mm cannon, blowing up the skiff.

"At the end of the day, this was an attempt," said Said's attorney Keith Kimball, an assistant federal public defender.

Kimball and other defense attorneys argued that life in prison was unconstitutional given that other pirates, who actually committed murder during their attacks, including four Americans shot and killed aboard the yacht Quest, also received life in prison.

"The court is aware of the gruesome nature of piracy," Jackson said. "The court finds a difference in the conduct."

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Gender-Based Violence

Woman Arrested at Heathrow for Conspiring to Commit FGM
The Independent
By Jonathan Owen
May 9, 2014

A 38-year-old woman has been arrested at Heathrow Airport on suspicion of conspiracy to commit female genital mutilation as a result of a police operation mounted at airports across the country during the past week, Scotland Yard announced today. The arrest took place at 6.30pm on Thursday, after officers had swooped on dozens of passengers arriving in London on flights from Nigeria and Sierra Leone.

In a statement, a Metropolitan Police spokesperson said: "The British national was held after arriving on a flight from Sierra Leone and taken to a west London police station where she remains in custody.

A 13-year-old Sierra-Leonian girl travelling with the woman was taken into the care of social services."

They added: "A Nigerian female was also taken into the care of social services as a potential victim of trafficking. Her age has yet to be established. An investigation is ongoing by Border Force but is not related to FGM offences."

The week-long crackdown against FGM, dubbed Operation Limelight, involved seven police forces, the Border Force and the National Crime Agency. Officers targeted flights to 'countries of prevalence' such as Somalia, Sierra Leone and the Democratic Republic of the Congo.

They had been briefed to look out for young girls returning from FGM ceremonies dressed like 'mini divas' in heels and make up.

Passengers were warned that FGM is illegal in Britain and carries a prison sentence of up to 14 years.

Some had their bags searched or were questioned in a bid to find victims of the practice.

There have been more than 60,000 victims of FGM in Britain, according to campaigners.

Yet just 11 cases have been submitted to the Crown Prosecution Service by the Metropolitan Police since 2010. "We're not getting an awful lot of referrals from the community, from medical professionals or from educational professionals.

We need those because without that we can't start an investigation," said Metropolitan Police Commissioner Sir Bernard Hogan-Howe yesterday.

Forcing girls to have medical examinations to check for evidence of FGM is "one of the things I think probably the Government is going to have to consider at some point," he added.

Nigerian Tragedy Underlines the Urgency of IVAWA
Thompson Reuters Foundation
By Stella Mukasa
May 12, 2014

Any views expressed in this article are those of the author and not of Thomson Reuters Foundation.

The introduction of the International Violence Against Women Act (IVAWA) in the U.S. Senate last week couldn't have come at a more critical time.

The abduction of some 300 Nigerian adolescent school girls in mid-April by Boko Haram militants constitutes an act of violent terrorism in its most insidious and local form, striking at the heart of families and communities.

That they might soon be sold as sex slaves - or already have been - is an abomination that will condemn the girls to a life of unspeakable abuse and horror.

Boko Haram is clearly the main culprit in this terrible crime, and the Nigerian government bears the primary responsibility for leading rescue efforts. We applaud the U.S. and other governments for pledging their support in the search for the girls, because as global leaders and citizens we all must act to protect women and girls from such terrible human rights abuses in the future.

This is one, heartbreaking example of why the United States must put the safety of women and girls at the heart of its foreign policy, which IVAWA would do.

Passing IVAWA would compel the U.S. government to respond to critical outbreaks of gender-based violence in order to ensure the safety and security of women and girls in situations such as what the world is witnessing in Nigeria in a timely manner.

If there is anything constructive that can come out of this tragedy, it is the awareness it has raised about the horror of forced marriage, human trafficking and gender based violence, which disproportionately affect millions of women and girls globally.

And - importantly - an awareness that there is a need for the international community to work together to protect vulnerable girls like those in Nigeria. Girls of all religious, geographic and cultural backgrounds are each and every day at risk of being forced to marry, being forced into sex, and being completely deprived of their rights to girlhood: to finish school, to choose if, when and whom to marry, to learn about their bodies and to have control over them.

Once married, girls in this situation are at much higher risk of violence, sexually-transmitted infections and early pregnancy; death from childbirth is the leading cause of death of girls aged 15-19.

Poverty, conflict and deeply-entrenched gender inequality drive this egregious human rights abuse, and so efforts to tackle their roots must be at the center of our response to this global scourge.

We are researching innovative solutions that are helping girls, their families and communities to buck the trend.

But with 14 million girls married off each year, much more needs to be done and at a much higher level. Next year, the UN Millennium Development Goals will reach their 15th and final year.

The international development agenda - which is now being shaped - must include clear goals towards eliminating forced and early child marriage and other forms of violence and abuse against girls if the world is to continue to make progress in the fight against global poverty and suffering.

As for the Nigerian girls, they will have a long road to recovery once they are rescued.

We know this from our research in northern Uganda and eastern Democratic Republic of Congo, where enormous numbers of women and girls have suffered sexual enslavement and violent sexual abuse as a result of conflict.

The U.S. government must be prepared to invest in prevention of violence before it occurs, as well as to come to their aid when violence does happen, with vital rehabilitation assistance.

Passing IVAWA will ensure that commitment, and ensure that other schoolgirls like them will be safe in their classrooms and communities.

--Stella Mukasa is director of gender, violence and rights at the International Center for Research on Women in Washington, DC.

REAKING NEWS: Kereke to face prosecution for rape charge
The Herald (Zimbabwe)
May 14, 2014

> **The High Court has ordered Prosecutor-General Mr Johannes Tomana to issue a certificate for the private prosecution of Bikita West Member of Parliament Dr Munyaradzi Kereke on charges of rape.**
>
> **Dr Kereke is alleged to have raped the then 11-year-old girl at gunpoint at his home in Vainona, Harare.**

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Asylum

Lebanon: Palestinians Barred, Sent to Syria
Human Rights Watch
By Joe Stork
May 6, 2014

> **The Lebanese government forcibly returned about three dozen Palestinians to Syria on May 4, 2014, putting them at grave risk. On the same day, the government also arbitrarily denied entry to Palestinians crossing over the land border from Syria.**
>
> The Lebanese government should urgently rescind its decision to bar Palestinians from Syria from entering Lebanon, Human Rights Watch said. Lebanon is turning people back without adequately considering the dangers they face. Such a policy violates the international law principle of nonrefoulement, which forbids governments from returning refugees and asylum seekers to places where their lives or freedom would be threatened.
>
> "The Lebanese government is bearing an incomparable burden with the Syrian refugees crossing its borders, but blocking Palestinians from Syria is mishandling the situation," said Joe Stork, deputy Middle East and North Africa director. "Palestinians are among the most vulnerable people in the Syria conflict, and like Syrian nationals are at risk of both generalized violence and targeted attacks."
>
> Human Rights Watch spoke by phone on May 5 to two men who were part of a group of about three dozen people deported by Lebanese General Security on May 4. They and a third person had remained in the strip of territory between the Lebanese and Syrian border checkpoints at the Masnaa crossing for fear of what would happen to them if they reentered Syria. The rest of the group reentered Syria, where their fate is unknown.
>
> The decision to deport the men followed their arrest at the Beirut airport on May 3 for allegedly attempting to leave the country using fraudulent visas.

On May 3, Lebanon's General Security issued a statement indicating that 49 Syrians and Palestinians from Syria had been stopped at the airport that day for using forged documents and that legal proceedings would be initiated against them. Salam (names have been changed for their protection), a 26-year-old Palestinian who had been living in the Yarmouk refugee camp in Damascus, said he left Syria in December 2012. He told Human Rights Watch that Beirut airport officials accused him of having a fake Libyan visa in his passport and then transferred him to the Masnaa border crossing without explanation. He said the authorities had deported him even though he told General Security officials that he feared he would be detained if he was returned to Syria. He said that he was registered as a refugee with UNRWA, the United Nations agency for Palestinian refugees, both in Syria and after arriving in Lebanon. He said:

"On May 3, I went to the Beirut airport to travel to Libya…General Security said the visa is fake…and detained me at the airport for 26 hours with 40 other Syrians. They transferred us to the Masnaa border without explaining anything…They told us that we will be deported. They did not give us an option to leave, to go to another country. I spoke with the head of General Security...I told him I can't go back to Syria because I will be detained for skipping my mandatory army service... The [General Security] general said that he can't do anything…Now I am staying here [in between the border check points] until a country agrees to take me in. I prefer to wait than to get arrested in Syria."

A 21-year-old Palestinian refugee from the Yarmouk camp, who was deported with his brother, told Human Rights Watch that he also was stopped at the Beirut airport while attempting to travel to Libya and accused of having a forged visa. He too was registered with UNRWA in Syria and in Lebanon, where he has been living for the past year-and-a-half. He said that they were arrested with approximately 45 others, the majority of them Palestinians. He said he was afraid to enter Syria because he too had fled his military service.

"They didn't explain anything to us – why they were detaining us and where they were taking us," he said. "They didn't give us any other option other than returning to Syria. We had women and children with us and one was pregnant."

Before the March 2011 uprising began, Syria was home to approximately 500,000 Palestinian refugees, some of whom were born and raised in the country. Palestinians from Syria, like Syrians there, have suffered greatly as a result of generalized violence and unlawful attacks by both government forces and non-state armed groups. Palestinian refugee camps, including in Aleppo, Daraa, and the Yarmouk camp in south Damascus, have come under attack and siege, resulting in numerous civilian fatalities and injuries.

The Yarmouk camp, home to the largest Palestinian community in the country before the start of the conflict, was besieged by government forces in December 2012, resulting in widespread malnutrition and in some cases death from starvation. While some humanitarian relief has entered Yarmouk since then, residents who remain there are denied access to life-saving

medical assistance and adequate food supplies. Half of the Palestinians who lived in Syria when the conflict began have been displaced as a result of the conflict, the Office for the Coordination of Humanitarian Affairs reported. Government forces have also arbitrarily detained and tortured Palestinians.

Since the conflict began, approximately 60,000 Palestinians from Syria have registered in Lebanon with UNRWA.

On November 25, 2013, Human Rights Watch wrote to the Lebanese minister of interior to raise concerns about "an apparent change in practice, and perhaps in policy, that seems to have begun in early August 2013 whereby Palestinians generally are denied entry from Syria." At that time, seven Palestinians from Syria who were stranded at the Masnaa crossing told Human Rights Watch that they were being denied entry. Some of the Palestinians stranded at the border said they had previously crossed into Lebanon without any problem, and they said that when they asked for an explanation, General Security officials at the border were either not forthcoming or became hostile or threatened to respond with a one-year or one-month bar on entry. The Ministry of Interior did not respond to the letter.

Human Rights Watch has also documented the Jordanian government's policy of pushing back Palestinian refugees from Syria trying to enter Jordan from Syria at the border, without considering their claims for asylum in Jordan. In violation of its international legal obligations, Jordan banned entry to all Palestinians from Syria in October 2012, denying refuge to those trying to flee Syria and rendering the presence of those already in the kingdom illegal, thereby increasing their vulnerability to exploitation, arrest, and deportation. According to the March 2014 Syria Needs Analysis Project report, Jordanian authorities have forcibly returned over 100 Palestinians to Syria, including deportations of women, children, and injured individuals. In one case, a Palestinian was arrested in late 2012 at his home in Syria 20 days after he was forcibly returned from Jordan, and his body was later dumped on the street in front of his father's house, showing bullet wounds and signs of torture, according to informed sources who asked not to be named.

"Concerned governments should generously assist neighboring countries, including Lebanon, so that they can meet the needs of refugees and asylum seekers from Syria," Stork said.

Refugees' First Steps Should not be Towards Nearest Homeless Hostel

Refugee Council
May 7, 2014

Today the Refugee Council has launched a new research report into the problems faced by new refugees. "28 Days Later: the experiences of new refugees in the UK" reveals new refugees can become homeless and destitute due to administrative delays and errors. Report author, Dr. Lisa Doyle, shares her reflections on the challenges faced by new refugees.

"I came here...I don't have anything...I was stressed, my family was away. I remember I walked a lot because I did not have money to pay for a bus even."

Since joining the Refugee Council in 2005, most of the research I have been involved in has focused on asylum seekers. I have investigated the impact of policy and practice on those who are waiting for a decision on their asylum claim, and have argued for improvements to the system to support people in that time of uncertainty. Over the years I have spoken with many people who were desperate to hear a positive decision so they could settle and start to rebuild their lives.

This research was different. It focused on the period just after someone is told they have refugee status. Asylum seekers imagine this moment as being a time of great joy and relief, but the refugees we spoke with for this research described this time being confusing, chaotic and isolated.

Being given only 28 days notice to find accommodation and a means of support would represent a challenge to most people, but for those who were new to the country, the barriers are especially high. One woman we interviewed said:

"The 28 days is hard on refugees...all of a sudden in a country you don't know and then it stops and you don't know what you are going to do. It was such a surprise when I ended up without a bed to sleep in."

The word "surprise" is one way to put it, "appalling" is another. The people caught in this situation have all gone through a rigorous asylum process and the government has acknowledged that they need protection, but it is at this point they are left unsupported.

It was horrible to hear refugees describe having to sleep rough, beg for money and wait for months to receive the financial support they were entitled to, often because of errors made by staff at the Home Office or Department for Work and Pensions.

Some of the issues can be easily fixed. If new refugees are given tailored advice and support during the transition period, they can more easily access the services they are entitled to.

That is not to say that there is not scope to improve the system too. We would like to see the Home Office continuing to support refugees until the point that they have alternative means (either through welfare benefits or employment), and for the government to provide a deposit for refugees to help them secure accommodation in the private rented sector.

Refugees' first steps after being granted protection should not be towards the nearest homeless hostel.

Sudan: Stop Deporting Eritreans

Human Rights Watch
May 8, 2014

Sudan is forcibly returning Eritreans to serious risk of detention and abuse at the hands of a brutal government. Sudan should immediately end these deportations and protect Eritreans.

The Sudanese authorities have deported 30 Eritreans, including at least 6 registered refugees, to Eritrea, Human Rights Watch said today. Sudan did not give the UN refugee agency access to the group. Unknown numbers of detained Eritreans recently convicted of immigration offenses in Sudan also risk deportation.

"Sudan is forcibly returning Eritreans to serious risk of detention and abuse at the hands of a brutal government," said Gerry Simpson, senior refugee researcher at Human Rights Watch. "Sudan should immediately end these deportations and protect Eritreans."

Eritrea, ruled by an extremely repressive government, requires all citizens under 50 to serve in the military for years. Anyone of draft age leaving the country without permission is branded a deserter, risking five years in prison, often in inhumane conditions, as well as forced labor and torture. In 2012, 90 percent of all Eritreans claiming protection in other countries were recognized as refugees or given other forms of protection.

On May 1, 2014, Sudanese authorities in eastern Sudan handed 30 Eritreans over to Eritrean security forces, according to two advocates in close telephone contact with the group at the time. Human Rights Watch also obtained further credible information confirming that the deportation took place and that six members of the group were registered refugees.

Sudanese security forces arrested the group of 30 in early February near the Libyan border and detained them for three months without charge and without access to the UN refugee agency, the two advocates said.

International law forbids countries from deporting asylum seekers without first allowing them to apply for asylum and considering their cases. This right applies to asylum seekers regardless of how they enter a country or whether they have identity documents. International law also prohibits the deportation, return, or forced expulsion of anyone to a place where they face a real risk to their life or of torture or ill-treatment.

On May 3, two Eritreans from a different group told a third advocate that a few days earlier Sudanese security forces had intercepted them and about 600 Ethiopians, Eritreans, Somalis, and Sudanese nationals attempting to cross the border to Libya. They said the police had taken them to the town of Dongola, about 500 kilometers north of Sudan’s capital, Khartoum, where they were charged and convicted of immigration offenses.

On May 4, Sudanese media reported that a court in Dongola had convicted 600 people and ordered all the Eritreans in the group to be deported to Eritrea.

In October 2011, Sudan unlawfully deported over 300 Eritreans to their country.

State Comptroller: Israeli asylum-seeker policy may be in violation of law
Harretz.com
By Ilan Lior
May 14, 2014

The state comptroller levels harsh criticism at Israel's treatment of asylum-seekers from Eritrea and Sudan in its report released Wednesday afternoon, saying that the state was neglecting to provide for the basic needs of foreigners who have been here for a long time and cannot be deported, and that the government policy lacks any plan for dealing with them.

The state comptroller warns several times in the report's chapter on the asylum-seekers that the government's actions may be in violation of the Basic Law: Human Dignity and Liberty, with international law or with the UN Global Compact regarding economic, social and cultural rights. Fearing the implications of the state comptroller's determination that Israel was violating international law and the compacts it had signed, officials of the Prime Minister's Office tried to stop parts of the report from being published. Officials of the State Comptroller's Office said that the final report contained no classified sections.

The report points to the lack of sufficient action plans in the fields of health, welfare, employment, infrastructure and policing. According to the state comptroller, the lack of such plans "left the 'field operatives' in the central and local government to deal with difficult, day-to-day dilemmas on their own without any guidance derived from policy and without the necessary means for doing so." The state comptroller added that the neglect of the foreigners also had a negative effect on Israeli citizens, mainly the resident of south Tel Aviv. "For all practical purposes, both groups — citizens and foreigners — are bound up with one another, particularly in areas where many foreigners are living. The neglect of members of one group by the state exacerbates the living conditions of members of the other group, and causes them harm."

The state comptroller emphasized that although the government was working on stopping infiltration into Israel, reducing the number of asylum-seekers in cities and encouraging them to leave the country, it had not put together a plan for dealing with the tens of thousands of Eritrean and Sudanese nationals living in Israel. "For more than five years, various agencies contacted the prime minister, the Prime Minister's Office, the Interior Ministry and even the attorney general and the Finance Ministry's budget department, asking that a policy be defined that would include aspects relating to the treatment of foreigners living in Israel outside the detention centers and that resources be allocated to carry it out. But none of them included a concrete

answer to the demand to set a governmental policy regarding the treatment of foreigners living in Israel who were not living in detention centers."

"The solutions adopted by the government, including taking the foreigners to a third country, having them leave Israeli voluntarily and establishing detention centers, could reduce the number of foreigners living in Israel. But even if those solutions are carried out, tens of thousands of foreigners will still be living here, outside the detention centers, over the coming years," the report stated. In this context, the state comptroller adds that Saharonim Prison and the Holot detention center have a capacity of 9,000 foreigners, which is less than 20 percent of the number of asylum-seekers living in Israel.

For that reason, he says, the government's solutions do not negate the need to set policy regarding the living conditions of asylum-seekers in Israel and to allocate a budget for the required work. The state comptroller charges the interior minister and the justice minister with the task of "drafting, as soon as possible, a proposed resolution in principle whose implementation will assure a minimum level of dignity for all the foreigners who cannot be deported, and make sure that it meets the requirements of the law." He added that they must bring the proposal up for discussion in the cabinet.

On the day that the comptroller's report was issued, an illustration was posted on the prime minister's Instagram account reading: "In the past year, from May 2013 to April 2014, 5,827 infiltrators left Israel. In the same period, 0 infiltrators entered Israel's cities."

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REPORTS

United Nations Reports

U.N. Warns Nigeria's Boko Haram Over Selling Schoolgirls as Slaves
Chicago Tribune
By Stephanie Nebehay
May 6, 2014

The United Nations warned Islamist Boko Haram militants on Tuesday that there was no statute of limitations if they carried out their leader's threat to sell more than 200 Nigerian schoolgirls kidnapped last month.

Boko Haram leader Abubakar Shekau said in a video released on Monday that Allah (God) had told him to sell the girls taken by his fighters from a secondary school in the village of Chibok, in northeastern Borno state, on April 14.

"We warn the perpetrators that there is an absolute prohibition against slavery and sexual slavery in international law. These can under certain

circumstances constitute crimes against humanity," U.N. human rights spokesman Rupert Colville told a news briefing in Geneva. "That means anyone responsible can be arrested, charged, prosecuted, and jailed at any time in the future. So just because they think they are safe now, they won't necessarily be in two years, five years or 10 years time," he said.

He also urged Nigeria's federal and local authorities to work together to rescue the girls. Local states have a lot of power and control over their territory, and the authorities in Borno are not of the same political party as the president, Colville said.

"So it is particularly important that there is close cooperation for the greater good, if you like, in this case, which is the release of these girls," he said. Any buyer could also be held liable, Colville said, noting that enslaved girls are likely to be exposed to "continuous physical, psychological, economic and sexual violence" and that forced marriage can have a "devastating" impact on victims. "The power differentials between girls and their 'spouses' is likely to undermine all autonomy, all freedom of will and expression of the girls.

The situation they will be in will be tantamount to slavery, or slavery-like practices within the so-called marriage," he said.

U.N. High Commissioner for Human Rights Navi Pillay said after a visit to Nigeria in March that abuses by the security forces are boosting support for the group which has waged an increasingly bloody five-year-old insurgency in the north.

Pillay, a former U.N. war crimes judge, also said at the time that Boko Haram's actions were more and more monstrous. She wrote to President Goodluck Jonathan on April 28 urging him to spare no effort to ensure the girls' safe return.

Any rescue attempt must be made in line with international human rights standards, Colville said, noting previous "allegations of excessive use of force by the Nigerian military in anti-Boko Haram operations". Civilians should not be endangered, nor should there be summary executions or arbitrary detentions of suspects, he said.

U.N. May Refer Syria Conflict to War Crimes Court

New York Times
By Somini Sengupta
May 7, 2014

France has drafted a Security Council resolution that seeks to refer Syria to the International Criminal Court in The Hague, tailoring it specifically to address American sensitivities, according to several people who have seen the text.

The United States has not ratified the Rome Statute that established the court, and it has long been leery of any efforts that could lead to American service members' being dragged into a global tribunal for war crimes.

In Syria, it faces another quandary: the Golan Heights, disputed territory that is claimed by both Syria and Israel.

The United States has long worried that any referral to the court could implicate Israel, a close ally, and bring it before the tribunal. The draft text, which could be circulated to all 15 members of the Council next week, gets around the problem by defining the conflict narrowly, as involving the Syrian government of President Bashar al-Assad, its allied militias, and armed opposition forces between March 2011 and the present.

It proposes to refer that "situation" to the court in a carefully worded bid to save Israel from becoming ensnared. The second way in which it addresses American concerns is that it exempts "current or former officials or personnel" of countries that have not ratified the Rome Statute - except Syria. That way, if American soldiers are ever involved in the Syrian conflict, they would be immune from prosecution.

The draft has been circulated to the five permanent members of the Council. The American Mission to the United Nations declined to comment.

France also declined to comment on the specifics of the text. While Russia may veto the measure, getting the United States on board to back such a resolution, which France has pushed for over the last several weeks, would serve to publicly isolate the Kremlin in the face of grave human rights abuses.

Navi Pillay, the United Nations high commissioner for human rights, has urged the Council to refer Syria to the court.

A separate inquiry has prepared a confidential list of suspected war criminals. Ken Roth, executive director of Human Rights Watch, said that while he wished the United States had signed on to the Rome Statute, the resolution was a sound compromise to go after those who are "committing mass atrocities in Syria." Because Syria was also not a party to the statute, the International Criminal Court can open an investigation only with a Security Council referral. It did so with Libya in 2011. That resolution also had language that specifically protected American soldiers from potential prosecution.

Exclusive: U.S. to Support ICC War Crimes Prosecution in Syria
Foreign Policy
By Colum Lynch
May 7, 2014

Barack Obama's administration has decided to back a push to have the International Criminal Court (ICC) open a formal, United Nations-sanctioned investigation into potential Syrian war crimes, embracing a strategy that it once dismissed as wholly inadequate in confronting mass atrocities in Syria, according to U.N.-based officials.

The United States this week gave the green light to France -- which has championed the effort -- to distribute the text of a draft Security Council

resolution authorizing an ICC investigation into alleged Syrian atrocities to other members of the 15-nation council for more formal negotiations, according to diplomats familiar with the matter.

The United States indicated that it could support the text after seeking assurances that the ICC prosecutor, based in The Hague, would have no authority to investigate any possible war crimes by Israel, which has occupied the Golan Heights since the Six-Day War in 1967, according to those diplomats. The draft will be shared this week with the U.N.'s five veto-wielding powers, including China and Russia, before being distributed to all members of the 15-nation council as early as next week. The resolution's passage is anything but ensured.

The new diplomatic push sets the stage for a big-power confrontation with Syria's closest ally, Russia. Moscow has previously expressed its skepticism over the virtue of an ICC prosecution of alleged Syrian war criminals.

U.N. diplomats say they are under no illusion that Russia can be easily dissuaded from vetoing the resolution.

Still, proponents of the measure say lobbying the Russians is worth a try, given that Russia has previously yielded to international pressure to rein in its Syrian allies.

"Russian objections to an ICC referral shouldn't be seen as irreversible," said Balkees Jarrah, international justice counsel at Human Rights Watch. "As the situation on the ground shifts in Syria, we have seen changes in Russia's position on chemical weapons and humanitarian access.. Russia would be hard-pressed to explain why it wouldn't want the ICC to go after atrocities by government forces and others alike since the court would examine crimes by all sides. So it would be a mistake to preclude circumstances in which the Russians would allow the council to give the court a mandate in Syria."

The Hague-based court is currently unable to prosecute crimes committed in Syria because Bashar al-Assad's government never joined the treaty body, known as the Rome Statute, establishing the global court. Under the terms of the treaty, only the U.N. Security Council has the power to invite the prosecutor to investigate crimes that occur beyond the reach of the court's jurisdiction. So far, the 15-nation council has approved previous investigations only in Libya and in Darfur, Sudan. Russia voted in favor of both investigations.

The United States and China abstained on the Darfur resolution, but they both voted in favor of the ICC investigation in Libya. If adopted, the latest resolution would grant the ICC prosecutor, Fatou Bensouda, the power to conduct an investigation into alleged war crimes, crimes against humanity, and other criminal acts allegedly committed by Syrian authorities and Syrian rebel groups. Funding for the investigation would be raised on a voluntary basis. Like previous resolutions, the draft would exclude the prosecution of non-Syrian nationals from countries, like Israel and the United States, that are not members of the court. The United States and its European and Arab partners are discussing a second draft resolution that would demand that the

Syrian army crack open its borders, particularly with Turkey, to accelerate the delivery of assistance to rebel-controlled communities that have received only a tiny fraction of international aid entering the country.

It remains unclear which resolution they would put for a vote first.

The efforts highlight how the White House is grasping for ways to handle the Syrian crisis as U.S.- and Russian-sponsored political talks have stalled, the killing continues unabated, and President Assad is preparing plans for his re-election. In September 2013, when the Obama administration was planning to strike Syria in response to its alleged use of chemical weapons, Samantha Power, the U.S. ambassador to the United Nations, questioned the efficacy of a range of diplomatic measures -- including condemnations, sanctions, and a Security Council referral to the ICC to prosecute alleged crimes -- to halt Syria's assault on civilians.

"What could the International Criminal Court really do, even if Russia or China were to allow a referral?" she said in a September 2013 speech before the Center for American Progress.

"Would a drawn-out legal process really affect the immediate calculus of Assad and those who ordered chemical weapons attacks?" Power made the remarks to help defend the administration's refusal to use U.S. military force against Assad's forces to stop their use of chemical weapons. The United States ultimately decided to hold its fire in exchange for a commitment by Syria to eliminate its previously secret chemical weapons program.

Still, the destruction of Syria's chemical weapons has done little to stem the killing of civilians through conventional means.

The three-year-long civil war has left well over 100,000 dead and placed more than 9 million in need of humanitarian handouts. More than 240,000 people live under siege conditions, most of them cut off by Syrian government forces from humanitarian assistance for more than a year. Civilians have been starved, tortured, and subjected to relentless attacks by chemical weapons, jet fighters, barrel bombs, and suicide bombers.

This past February, the U.N. Security Council threatened to undertake unspecified "further steps" against Syria if it failed to improve conditions for civilians and provide unfettered access to humanitarian aid workers. But U.N. Secretary-General Ban Ki-moon subsequently issued a statement saying that "none of the parties to the conflict have adhered to the demands of the council.

Civilians are not being protected. The security situation is deteriorating and humanitarian access to those most in need is not improving." There has been mounting international pressure for a prosecution of perpetrators of crimes in Syria. In January 2013, Switzerland organized an effort by nearly 60 countries to persuade the Security Council to authorize an ICC investigation.

This April, the U.N. high commissioner for human rights, Navi Pillay, issued the latest of repeated calls for the U.N. Security Council to invite the ICC prosecutor to look into crimes.

David Kaye, a professor of international law at the University of California, Irvine, who previously worked on ICC policy at the State Department, said that it might be easy to dismiss the council action as an empty gesture that makes Washington and Paris "feel morally good" about themselves knowing full well that Russia will block it.

But he said it is time for the United States to stop using the threat of a Russian veto as an excuse for inaction in the ICC. "I don't think it's on anybody's mind in Syria [that] there is a risk that they will be held accountable for crimes," he said. But he said American support for a prosecution might grab the attention of those carrying out the killing.

"Once the United States starts to get involved, I think it changes the conversation."

That kind of involvement would mark a significant shift for Washington, which has never ratified the Rome Statute establishing the world's first international criminal court and which has long had a complicated relationship with the institution.

Then-President Bill Clinton signed the treaty during his final days in office, but only after negotiating key provisions aimed at shielding American nationals from possible prosecution.

President George W. Bush initially moved aggressively to undermine the court's authority, authorizing a senior State Department official, John Bolton, to issue a letter to the United Nations repudiating Clinton's signature.

Bush's U.N. envoy, John Negroponte, threatened to shut down U.N. peacekeeping missions unless the U.N. Security Council offered a blanket exemption for American nationals from prosecution by the ICC.

The Bush administration ultimately offered grudging support to the court by withholding its veto of a 2005 Security Council resolution triggering an ICC investigation into crimes in Darfur that ultimately led to the issuance of arrest warrants for Sudanese President Omar Hassan al-Bashir and other senior officials accused of genocide and other war crimes.

The Obama administration has been more supportive of the court, voting in favor of a 2011 resolution launching an investigation into war crimes by members of the regime of Libyan leader Muammar al-Qaddafi. But Washington's support for that prosecution has softened since the overthrow of the regime and its replacement by a pro-Western government.

Ex-ICC Prosecutor Warns Palestinians on Anti-Israel War Crimes Effort
The Times of Israel
May 7, 2014

The former chief prosecutor of the International Criminal Court, on a visit to Israel, urged the Palestinians to proceed with caution as they consider pursuing war crimes charges against Israel. He said it would be preferable for the two sides to work out their differences directly.

Luis Moreno-Ocampo said the Palestinians should not rush ahead with a case against Israel, saying they could expose themselves to the same accusations.

The Palestinians were accepted as a nonmember state in the UN General Assembly in 2012, an upgraded status that allows them to qualify for membership in dozens of international conventions and agencies.

Most worrisome for Israel is the Palestinian threat to join the International Criminal Court and pressing war crimes charges against Israel.

The Palestinians allege that Israeli crimes range from actions carried out by its military to construction of Jewish settlements on occupied land captured in the 1967 Mideast war.

When he was the court's chief prosecutor, Moreno-Ocampo turned down a request by the Palestinians to join the court. But as a nonmember state, they are now eligible, he said.

If they accepted its jurisdiction, however, the Palestinians could also be investigated for Hamas rocket attacks and suicide bombings against Israeli civilians.

"The obstacle they had in the past is gone, it is removed," he told the Associated Press.

"The best would be if Israelis and Palestinians create a common approach to prevent future activities."

Moreno-Ocampo, currently a professor at Yale University, is visiting the Hebrew University in Jerusalem to speak before students in its Transitional Justice program.

He refused to speculate whether war crimes have been committed by either side.

Regardless, he recommended the sides avoid the court and find a "creative" way to resolve their differences.

"Everyone feels they are victims," he said. "If you don't want to be at the ICC, do something before - don't wait."

UN Wants Hybrid Court for South Sudan War Crimes
Radio Tamazuj
May 8, 2014

The United Nations wants a special or hybrid court for South Sudan assisted by the international community to pursue serious and independent investigations of crimes against humanity, including war crimes.

In its report published today, 8 May, the UN concludes that national measures announced by the government do not meet the minimum requirements of accountability required by international human rights law.

The second human rights report by the UN Mission in South Sudan since the start of the conflict last year condemns the government forces of President Salva Kiir and the opposition forces of former vice president Riek Machar for abuses including extrajudicial killings, enforced disappearances, rape, arbitrary arrests, and attacks against civilians.

According to the report, the two rival armies used extreme forms of violence as a means of spreading terror among the civil population. They are further accused of attacking hospitals in Bentiu and Malakal.

However, the report does not mention the total destruction of the MSF hospital in Leer by government forces and the allied Darfur rebel movement JEM.

The SPLA did not allow the peacekeeping mission access to the southern part of Unity State, including Leer, where some of the worse and largest scale crimes against humanity have been reported. UNMISS says that the parties to the conflict have targeted civilians, largely along ethnic lines, and that attacks against UNMISS itself have also increased, endangering the peacekeeping mission's ability to effect its mandate to protect civilians. Expanded report The report of the UN is a follow-up on an earlier interim report released in February.

New elements of this report concern the documented involvement of JEM in alliance with the government army. The Darfur rebel group has been involved in several crimes against humanity including killings, gang-rape and looting, according to the report.

Hate speech The UN report has also clarified its initial condemnation of hate speech over Bentiu Radio by opposition forces on April 15. After the army of Machar took over the state radio, the army reportedly called for calm and urged the population to leave the ethnic differences behind.

Later, however, a man who was identified by the UN as a 'SPLM Secretary General of Unity State' came on the air and stated in a mix of Nuer and local Arabic that Dinka SPLA and JEM "had raped Nuer women and now their wives were pregnant with Dinka and JEM babies."

He called on young men to meet at the SPLA headquarters the next day in order to go to Dinka areas and do what the Dinka did to their wives and girls.

Hybrid court UNMISS recommends that the national process investigating all the crimes to be complemented by international assistance through a special or hybrid court.

The international participation would help to ensure that all parties to the conflict are held accountable. "By working side-by-side with South Sudanese institutions and experts, the confidence and the capacity of national institutions would be enhanced and real accountability could be achieved," `UNMISS suggests.

Rights Groups Urge Abbas to Let ICC Prosecute War Crimes Committed on Palestinian Territories

Salem-News.com
By Amira Hass
May 9, 2014

Amnesty International and Human Rights Watch urged Palestinian President Mahmoud Abbas on Thursday to promptly seek access for Palestine at the International Criminal Court in The Hague.

The world's two leading human rights NGOs, along with 15 others, mainly Palestinian, said in a letter to Abbas that such a move "could ensure access to international justice for victims of war crimes and crimes against humanity committed on Palestinian territories, and would send an important message that such crimes cannot be committed with impunity."

They noted that the ICC Office of the Prosecutor has ruled that the Palestinian Authority's 2009 decision to accept the court's jurisdiction was marked by "legal invalidity," and that this was not changed by the UN General Assembly's 2012 decision to upgrade Palestine to the status of "non-member observer state.

The letter stressed to Abbas that ICC Prosecutor Fatou Bensouda has since said that "the ball is now in the court of Palestine" to seek the court's jurisdiction by joining the Rome Statute, which established the International Criminal Court.

The signatories wrote that they appreciated that Abbas was under pressure from the United States and Israel, and at times from other Western countries as well, not to go to The Hague. But they asserted: "We oppose these efforts to politicize justice for victims of serious crimes under international law, and urge you to resist them.

The commission of war crimes with impunity has regularly undermined the peace process. A credible prosecution threat would help to advance the cause of peace."

The letter was delivered in Ramallah to chief Palestinian negotiator Saeb Erekat, who said he would give it immediately to Abbas, according to a statement from the Palestine Liberation Organization.

Erekat thanked the human rights groups for their "tireless work towards the advancement of a just peace for Palestine and Israel, based on respect for human rights and international law. The world must realize that Palestine cannot continue being the exception to the rule."

Sri Lanka to Implement UN Demands Except Probe Over 'War Crimes'
The Daily Star
May 11, 2014 President Mahinda Rajapaksa has said Sri Lanka is in the process of implementing all demands made by the sponsors of the UNHRC resolution against it except for allowing an international probe into alleged human rights violations during the last phase of the war with the LTTE.

The assertion was made by the Sri Lankan President during a meeting on Friday with Seiji Kihara, Japan's Parliamentary Vice Minister for Foreign Affairs.

Rajapaksa told the Japanese minister, "Please tell this truth to rest of the world. Except for an international inquiry we are in the process of implementing all other demands made by sponsors of the Resolution."

The President's office quoted Kihara as saying that the UNHRC resolution was unhelpful to Sri Lanka.

"We are not ready to accept biased reports prepared by international bodies.

We are confident that Sri Lanka is capable of solving its problems one by one. What is needed is to engage the international community," Kihara said.

Japan along with India was one of the 12 countries which abstained in the UNHRC vote in Geneva in March. The US-sponsored resolution was adopted with 24 countries voting in favour.

The resolution demanded the setting up of an international investigation into alleged war crimes in Sri Lanka during the last phase of the nearly three decades-long conflict with the LTTE. Sri Lanka has vowed not to cooperate with the investigation.

The Challenges in the Field of Asylum in a European Perspective
Chicago Tribune
By Michelle Nichols
April 18, 2014

France circulated a draft resolution to U.N. Security Council members on Monday that seeks to refer the three-year-old civil war in Syria to the International Criminal Court for possible prosecution of war crimes and crimes against humanity.

The 15-member council is due to meet on Wednesday to discuss the draft and it could be voted on within days, diplomats said. But Moscow - a veto-wielding council member and ally of Syrian President Bashar al-Assad - has made clear it is against such a move.

Russia, supported by China, has already blocked three resolutions that would have condemned Assad's government, threatened sanctions and called for war crimes accountability.

Russian U.N. Ambassador Vitaly Churkin has reinforced Moscow's stance against referring Syria to The Hague-based court, telling Reuters: "Our position has not changed." More than 150,000 people have been killed in the Syrian conflict.

Some 2.5 million people have fled abroad and 9 million people inside the country need help, including nearly 3.5 million who have no access to essential goods and services.

U.N. investigators said in March that they had expanded their list of suspected war criminals from both sides in the civil war and that the evidence was solid enough to prepare any court indictment.

U.N. human rights chief Navi Pillay told the Security Council last month that human rights violations by Syrian government forces "far outweigh" those by armed opposition groups.

The United States agreed to support the French draft after ensuring that Israel would be protected from any possible prosecution at the International Criminal Court related to its occupation of the Golan Heights in Syria, U.N. diplomats said.

"We are grateful the U.S. (has) overcome objections and constraints to support the referral of Syria to the ICC," French U.N. Ambassador Gerard Araud posted on Twitter on Friday. GATHERING EVIDENCE Israel captured the Golan Heights from Syria in a 1967 war and annexed the strategic plateau in a move the world has not recognized.

Syrian troops are not allowed in an area of separation - monitored by U.N. peacekeepers - under a 1973 ceasefire formalized in 1974.

The draft resolution specifies that the situation to be referred to the court is "the widespread violations of human rights and international humanitarian law by the Syrian authorities and pro-government militias, as well as the human rights abuses and violations of international humanitarian law by non-State armed groups, all committed in the course of the ongoing conflict in the Syrian Arab Republic since March 2011."

Eleven countries on the Security Council are members of the International Criminal Court.

The United States, Russia, China and Rwanda are not.

U.S. State Department spokeswoman Jen Psaki said on Friday: "We've long said those responsible for atrocities in Syria must be held accountable.

We will also continue to support efforts to gather evidence to hold accountable those responsible for atrocities in Syria."

In an informal Security Council meeting organized by France last month, member states viewed graphic pictures taken in Syria by a former Syrian military police photographer that showed what appeared to be evidence of brutal torture, including eye gougings, strangulation and long-term starvation. Former war crimes prosecutors have described the thousands of photos as "clear evidence" of systematic torture and mass killings in Syria's civil war.

UN: Special Tribunal Must be Set for War Crimes in South Sudan
The Upper Nile Times
May 13, 2014

Geneva - The UN Secretary General Ban Ki-Moon said that as war crimes and crimes against humanity are believed to have been perpetrated, a special court is required by the UN body to investigate crimes committed in the 5 months long conflict.

"If the conflict continues, half of South Sudan's 12 million people will either be displaced internally, refugees abroad, starving or dead by the year's end," Ban warned the UN Security Council, according to a news report by AP Ban however welcomed on Monday the ceasefire agreement signed by President Salva Kiir last Friday with the rebel chief and former vice president, Riek Machar, and demanded an immediate end to fighting, which flared over the weekend.

Ban urged the members of the UN security council to expedite the process of forming the tribunal so that perpetrators of the war crimes in South Sudan civil war are brought to books. He disclosed to the panel that he spoke at length to both leaders of South Sudan conflict and warned them that crimes against humanity were committed by both sides.

Bringing Perpetrators of Serious Crimes to Justice Vital for Libya's Transition - ICC Prosecutor
UN News Center
May 13, 2014

Ensuring that there is no impunity for those alleged to have committed serious crimes in Libya is crucial to bring lasting peace to the country, the Prosecutor of the International Criminal Court (ICC) stressed today, as she lamented the slow progress to date in this vital aspect of the democratic transition.

"Individuals alleged to have committed serious crimes in Libya must be brought to justice either in Libya or at the International Criminal Court: this is not negotiable," Fatou Bensouda said in her briefing to the Security Council.

"Above all, we hope we can count on the cooperation of States in facilitating the smooth arrest and surrender of those against whom warrants will be issued," she added.

"This is key for sending a clear message to would-be Libyan perpetrators and indeed all other would-be perpetrators that the international community is watching and will no longer allow impunity to reign unchecked."

The 15-member body referred the situation in Libya to the ICC in 2011, the year that the country embarked on a democratic transition following the ouster of Muammar al-Qadhafi.

The Prosecutor cited the need for the Government to immediately surrender Saif Al-Islam Qadhafi - the former leader's son, who has been indicted by the ICC in relation to attacks against protesters and rebels during the 2011 uprising - to the Court without further delay. "National judicial proceedings can never be an excuse for failure to comply with the Chamber's order," she noted.

Ms. Bensouda also regretted that progress has been slow in the case of former senior intelligence official Abdullah Al-Senussi, who was also indicted for alleged crimes against humanity. The ICC had decided that he could be tried in Libya by the national authorities. "We urge the Government of Libya to ensure that the case against him is proceeded with without undue delay and with full respect for his due process rights," she stated.

Overall, the Prosecutor noted that Libya continues to face "serious security challenges and deep political crisis" which undermine its ability to effect much needed meaningful judicial and other changes.

"The steady decline in the security situation has hampered my Office's investigative activities and hindered possibilities for effective interaction with the Government of Libya," she stated.

"Strengthening Libya's ability to assume its security responsibilities remains key to the success of our joint endeavours to bring lasting peace in Libya," she added, noting the need for increased and well-coordinated international efforts to provide support to the country.

Ms. Bensouda said that reports of torture and mistreatment as well as deaths by torture in illegal detention centres are "worrying," and stressed that illegal detentions and torture should have no place in modern Libya.

"Those alleged to be responsible for these crimes must be investigated, prosecution and face the full force of the law," she stated.

To assist Libya, the Prosecutor proposed that the country's key partners should seriously consider forming a contact group on justice issues through which material and legal support could be provided regularly to enhance Libya's efforts to bring justice to victims.

She hoped the proposal will be followed up as soon as possible, saying that this will send a clear message to the Government that its key partners intend to follow through on their pledges to support justice initiatives and to support the evolving relationship between the ICC and the Government.

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TRUTH AND RECONCILIATION COMMISSIONS

Nepal

NHRC Postings Must for Setting up TRC
eKantipur

May 7, 2014

The appointment of commissioners to the National Human Rights Commission remains in limbo at a time when the rights debate has taken centre stage with the passage of the Truth and Reconciliation Commission (TRC) bill from Parliament two weeks ago.

As per the bill, the NHRC chairperson is one of the five members of the Recommendation Committee to be formed to name the chairperson and members of the TRC. A former chief justice heads the committee while the government picks three persons including one woman from among experts contributing to human rights and peace.

On April 6, the Constitutional Council issued a public notice, inviting applications from eligible candidates for vacant posts in three constitutional bodies—the NHRC, the Commission for Investigation of Abuse of Authority (CIAA) and the Public Service Commission (PSC).

All the five posts at the NHRC, including chairperson, have been vacant since September, while two members of the PSC and three CIAA commissioners are yet to be appointed.

"We have received about 400 applications but we have not sorted them out. We don't know yet how many have applied for the NHRC posts," said Chief Secretary Leela Mani Paudyal.

The NHRC will have five members—a retired chief justice or a Supreme Court justice as the chair and four from among those having outstanding contribution to the protection and promotion of human rights or social work.

The Constitutional Council has not met to initiate the process of filling the vacancies. In order to form the Recommendation Committee, the Council has first got to make appointments to the NHRC.

Besides, the bill has yet to be authenticated by the President. This has made some stakeholders impatient. "The government seems to have adopted delay tactics to preclude uproar over the bill," said Advocate Govinda Bandi.

He argues that the bill has some problematic provisions, which are likely to be opposed by rights activists and victims. They have objected to the commission's role in reconciliation and amnesty.

The commission will have the power to mediate between victims and perpetrators for reconciliation. It can also recommend amnesty for crimes committed during the decade-long insurgency.

Victims' Families Object to TRC, CID Bill
The Himalayan Times

May 10, 2014

Families of victims of the armed conflict on Saturday took exceptions to some provisions of the Bill on Truth and Reconciliation Commission (TRC) and the Commission of Inquiry on Disappearances (CID).

Family members of victims of the decade-long Maoist insurgency held a meeting at the Capital today and concluded that the Bill has granted more than necessary rights to the commission to decide on methods to proceed conflict-era cases. Such rights entitled to the commission are against the principles of natural justice and free judiciary, according to them.

The Bill, already passed from the Legislature-Parliament, provisions that the Commission can decide if a case would be settled in understanding, via court procedures or amnesty.

"The meeting concludes that such a law brought in political consensus notwithstanding victims' voices cannot end existing transition and impunity," read a statement issued after the meeting.

The meeting decided to draw attention of the political parties, the government and the Parliament to correct controversial provisions in the Bill.

President Certifies TRC Bill
eKantipur

May 11, 2014

President Ram Baran Yadav on Sunday certified the bill on Truth and Reconciliation Commission and the Commission on Enforced Disappearances in accordance with the Article 87 of the Interim Constitution.

The bill was passed by the Legislature-Parliament on April 25.

The Legislature-Parliament Secretariat informed about this by issuing a notice on Sunday.

The endorsement of the bill turns an important page in the seven years of the signing of the Comprehensive Peace Agreement (CPA) that envisioned a TRC within six months. The bill has undergone some amendments as sought by the Nepali Congress, the CPN-UML and the UCPN (Maoist) parties.

As a result, a special court has been provisioned to deal with conflict related cases. The bill requires the government attorney to file cases forwarded by the TRC. It also mandates reparations for victims or their families as per their priorities.

Sri Lanka

Can the TRC Model Work in Sri Lanka?
Khabar South Asia
By Munza Mushtaq
May 9, 2014

Sri Lankans are debating whether their nation could successfully adapt a South African-style Truth and Reconciliation Commission (TRC) mechanism for post-conflict healing.

For Sri Lankan northerner Kalaiselvam, the sights and sounds of peace have replaced those of war.

Yet nearly five years after Sri Lanka's ethnic conflict ended, things still aren't quite right, said the Mullaitivu resident who lost many friends and relatives during the war. For Kalaiselvam and many others in Sri Lanka's predominantly Tamil north, questions related to the war and its underlying causes remain unresolved.

A Truth and Reconciliation Commission (TRC) could change that, he said.

"I think if all parties-- including the Tamil parties-- have a say in this, it might benefit us and even help address various grievances of our minority community," Kalaiselvam, 47, told Khabar South Asia.

Paikiasothy Saravanamuttu, who heads a Colombo policy think-tank, said such a dialogue could contribute to progress and healing.

"Unfortunately we are not addressing the sources of conflict. In fact, we are sustaining and reproducing them at present," Saravanamuttu, executive director of the Centre for Policy Alternatives, told Khabar.

"Whether it be a TRC or something along those lines, if this were possible, there is no denying that the war has ended but the conflict continues and we are in danger of going back to the past."

The government faces UN Human Rights Council pressure for alleged war crimes during the final stages of the conflict. Last month, the council voted to investigate Sri Lanka's wartime conduct. The government has since said it will not co-operate with the probe.

Talking TRC

Sri Lankan and South African officials met recently to explore the TRC national reconciliation concept. By early June, Cyril Ramaphosa, South Africa's special envoy to Sri Lanka on the TRC issue, is expected to visit, the Sunday Leader reported.

Sri Lanka is still discussing the possibility of adapting the TRC model, but nothing has been finalised, according to government spokesman and Minister Keheliya Rambukwella.

Nonetheless, the TRC issue has many Sri Lankans examining whether the South African model could work. Under that model, perpetrators who committed politically motivated acts of violence would receive immunity in exchange for testimony.

Public opinion

Saravanamuttu is among those expressing doubts about the model's applicability to Sri Lanka.

A mechanism for establishing the truth is needed, but people victimised or traumatised by the war cannot be expected to forget and forge ahead, he said.

"In any event it is difficult to conceive of a situation in which the Tamil National Alliance (TNA), which is the main Tamil political party in the country, will agree to a blanket amnesty and to waiving prosecutions," Saravanamuttu added.

In an April 27th Sunday Leader interview, TNA MP Suresh Premachandran said: "In Sri Lanka, the war is over, but the conflict is still alive. What we want is a political settlement. After that they can establish a TRC or any other measures for further reconciliation, where Tamils, Muslims and Sinhalese live together."

However, Asanga Abeyagoonasekera, executive director of the Lakshman Kadirgamar Institute of International Relations and Strategic Studies (LKIIRSS), a think-tank affiliated with the Ministry of External Affairs, is more optimistic.

"It would have to be a customised process for Sri Lanka because the South African and Sri Lankan situations are different in many ways," Abeyagoonasekera told Khabar.

"Like Tutu, our religious leaders could also play an important role in helping achieve reconciliation. Also, building a wholesome relationship with our own diaspora community is essential," he said.

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COMMENTARY AND PERSPECTIVES

No, the Attack on the USS Cole Did Not Take Place in Armed Conflict
Opinio Juris
By Kevin Jon Heller
May 6, 2014

I argued more than three years ago that the US decision to prosecute Abd al-Rahim Abdul al-Nashiri in a military commission was illegitimate, because the attack on the USS Cole did not take place during an armed conflict. (I also pointed out that al-Nashiri was systematically tortured, including through the use of mock executions and waterboarding.) Peter Margulies takes a whack at the contrary position today at Lawfare, and the results aren't pretty. Here, for example, is what he says about the Tadic test:

Under international law, the existence of a noninternational armed conflict depends on the intensity and duration of violence and the existence of an organized armed group (OAG) responsible for the violence. The OAG criterion is readily met: "core" Al Qaeda ordered the Cole attack and used it as a basis for recruiting more terrorists. The geographic distance between Yemen and Afghanistan is irrelevant given the centrality of Al Qaeda's planning, which placed Osama bin Laden and Al-Nashiri in the same OAG.

The duration and hostility factors also break against Al-Nashiri. In the MCA, Congress gave military commissions jurisdiction over acts committed before September 11, recognizing that Al Qaeda's military efforts against the US predated that event. The conduct of the US prior to the Cole bombing buttresses Congress's finding. In August, 1998, President Clinton responded to the Al Qaeda-planned East African Embassy bombings, which killed over 250 persons, with a wave of Cruise missile strikes in Afghanistan and Sudan. That sounds pretty intense to me, although the intensity seems lost on Al-Nashiri's advocates.

Margulies gets the NIAC test right, and he is even likely right that al-Nashiri was part of "core" al-Qaeda at the time of the attack on the USS Cole. But his discussion of the duration and intensity factors is deeply flawed. To begin with, as I have pointed out before (numerous times), the existence of a NIAC is a purely objective question, one determined by the facts on the ground, irrespective of the subjective perception of the parties to the hostilities. The MCA's jurisdictional provisions are thus irrelevant to whether the US was involved in a NIAC with core al-Qaeda when the USS Cole was attacked.

More importantly, it is clear that no such NIAC existed at the time of the attack. The 1998 attacks that Margulies mentions — al-Qaeda's bombings of the US embassies in Tanzania and Kenya, and the cruise-missile attacks launched by the US in Afghanistan and Sudan as part of the hyperbolically-named Operation Infinite Reach – do not constitute the kind of "protracted armed violence" that Tadic requires, no matter how intense they may appear to Margulies. More importantly, though, those attacks took place more than two years before the attack on the USS Cole, with no significant hostilities between al-Qaeda and the US in the interim. It is thus even less plausible to argue that the 1998 attacks created a NIAC between the US and core al-Qaeda that persisted until the attack on the USS Cole in 2000. That's simply

not the way NIAC works: once hostilities are no longer adequately protracted, NIAC ends until adequately intense armed violence begins again — at which time a new NIAC is created.

Margulies, it's worth noting, seems to recognize that his international-law argument is flawed. Here is what he argues later in his post:

Al-Nashiri's argument relies on a stylized view of the nature of armed conflict that bears little similarity to actual wars. Wars frequently feature peaks and valleys. Consider the "Phony War" between Germany and the Allies in 1939-40 after Germany's conquest of Poland. In current events, consider the uneasy impasse that prevailed in the Ukraine between Russia's March move into Crimea and Friday's fighting between Ukraine's government and pro-Russian militias – not peace, to be sure, but a pause with little actual violence. Israel's continuing armed conflict with Hamas has the same episodic character. Sporadic violence may not fit the stereotype of war, but it has always been part of war's reality.

Margulies' first two examples are irrelevant to whether a NIAC can survive "peaks and valleys" in fighting, because they are classic international armed conflicts: unlike NIAC, which requires protracted armed violence, an IAC is triggered and maintained by any use of interstate force. (It is also triggered, of course, by a formal declaration of war — as was the case with the Phoney War.) And his third example mixes apples and oranges, because the episodic conflict between Israel and Hamas has taken place largely, if not completely, in the context of a belligerent occupation, making it an IAC, as well. (To be sure, some consider the events in Gaza between December 2008 and January 2009 to have created a separate NIAC — but that position actually hurts Margulies' cause, because it foregrounds that NIAC exists only when hostilities between a state and an organized armed group are genuinely protracted.)

Margulies may be right that "sporadic violence… has always been part of war's reality." Unfortunately for him, such violence is anathema to the law's reality regarding non-international armed conflict. There was no protracted armed violence between the US and core al-Qaeda in 2000. So there was no NIAC between the US and core al-Qaeda when al-Nashiri allegedly masterminded the attack on the USS Cole.

Did You Know Hazarding a Vessel Was a War Crime? Me Neither.
Opinio Juris
By Kevin Jon Heller
May 7, 2014

We have a new challenger in the competition for worst decision by a military commission ever! Judge Pohl has now issued an order in al-Nashiri concluding that Charge IX, Hijacking or Hazarding a Vessel or Aircraft, states a violation of the international laws of war. Here is the definition of that "war crime," 10 U.S.C. § 950t(23):

(23) Hijacking or hazarding a vessel or aircraft.— Any person subject to this chapter who intentionally seizes, exercises unauthorized control over, or endangers the safe navigation of a vessel or aircraft that is not a legitimate military objective shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

Hijacking or hazarding a vessel is not a grave breach of either the Geneva Conventions or the First Additional Protocol. The Rome Statute does not criminalise hijacking or hazarding a vessel. No international tribunal has ever prosecuted the hijacking or hazarding a vessel as a war crime — not the IMT, not the ad hocs, not the ICC. The ICRC's study of customary IHL does not mention hijacking or hazarding a vessel — although it does note that both the US Naval Handbook (Vol. II, p. 3893) and The Restatement (Third) of the Foreign Relations Law of the United States (Vol. II, p. 3938) specifically distinguish between hijacking and war crimes. And so on.

How, then, does Judge Pohl somehow conclude that hijacking or hazarding a vessel is a war crime — as opposed to attacking civilians or civilian objects, both of which are war crimes and are both of which are also detailed in al-Nashiri's charge sheet? By citing the widespread ratification of the Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation.

Seriously. By citing the widespread ratification of the Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation.

Here is what Judge Pohl says (emphasis mine):

The M.C.A. prohibits conduct that "endangers the safe navigation of a vessel." The similarity between the M.C.A. and the SUA Convention is plain and unambiguous. The SUA Convention proscribes the same conduct the M.C.A. proscribes and of which the Accused is charged… The Commission finds by a preponderance of the evidence the Prosecution has demonstrated the crime of Hijacking or Hazarding a Vessel or Aircraft is based on norms firmly grounded in international law and can be plainly drawn from established precedent. Therefore, the Commission concludes the offense of Hijacking or Hazarding a Vessel or Aircraft was an international law of war crime at the time the Accused allegedly engaged in the conduct, thus conferring jurisdiction over the offense.

That's it. That's Judge Pohl's entire argument. Never mind that the SUA Convention says nothing about the laws of war, applying equally in armed conflict and peacetime. Never mind that the SUA Convention does not even purport to create an international crime — it is, of course, a suppression convention that simply obligates States Parties to domestically criminalise certain acts. Never mind that, even if it is possible to argue that the widespread ratification of the SUA Convention somehow creates a customary rule prohibiting hijacking or hazarding a vessel (difficult in itself), such a customary rule would still not create "an international law of war crime."

I hope I don't need to explain in more detail why the widespread ratification of a suppression convention doesn't create a war crime. But let's take Judge Pohl's methodology seriously. Want to know what other kinds of acts are also war crimes prosecutable in a military commission?

Nuclear proliferation (NPT — 190 ratifications) Threatening civilian aviation (Safety of Civilian Aviation Convention – 188 ratifications) Drug trafficking (Illicit Traffic in Narcotics Convention – 188 ratifications) Manufacturing hallucinogenic drugs (Psychotropic Substances Convention – 182 ratifications) Using child labor (Worst Forms of Child Labor Convention – 177 ratifications) Transnational organised crime (Transnational Organized Crime Convention – 176 ratifications) Kidnapping diplomats (Internationally Protected Persons Convention – 176 ratifications) Corruption (Anti-Corruption Convention – 167 ratifications)

All of those conventions are suppression conventions — and each has been much more widely ratified than the SUA Convention. According to Judge Pohl's logic, therefore, all of those acts are also violations of the international laws of war. In the off chance you needed additional proof that the military commissions are a joke, Judge Pohl's decision is Exhibit A.

US Throws Support Behind Referral of Syria to the ICC
Justice in Conflict
By Mark Kersten
May 7, 2014

There is an obvious danger in anyone getting their hopes up that this change in policy will result in a referral any time soon. What it does mean, however, is that a previously reluctant government has recognized that it is in its interests to publicly support an ICC intervention in Syria. This is a significant change in course for the Obama administration. And if nothing else, it creates more coherency in the US's policy towards the Court which has suffered from being highly selective.

Here is a snippet from Lynch's post:

Barack Obama's administration has decided to back a push to have the International Criminal Court (ICC) open a formal, United Nations-sanctioned investigation into potential Syrian war crimes, embracing a strategy that it once dismissed as wholly inadequate in confronting mass atrocities in Syria, according to U.N.-based officials.

The United States this week gave the green light to France — which has championed the effort — to distribute the text of a draft Security Council resolution authorizing an ICC investigation into alleged Syrian atrocities to other members of the 15-nation council for more formal negotiations, according to diplomats familiar with the matter.

The United States indicated that it could support the text after seeking assurances that the ICC prosecutor, based in The Hague, would have no authority to investigate any possible war crimes by Israel, which has occupied the Golan Heights since the Six-Day War in 1967, according to those diplomats. The draft will be shared this week with the U.N.'s five veto-wielding powers, including China and Russia, before being distributed to all members of the 15-nation council as early as next week.

The idea of referring Syria to the ICC is nothing new. It has been debated since the very onset of the war (for recent takes, see here, here and here) and has been gaining steam in recent weeks. One of the key sticking points for the US in supporting a referral are its concerns that granting the ICC jurisdiction in Syria would result in the Court investigating Israel, which has long held control of the Golan Heights. According to Lynch, the US received assurances that it would not have the authority to investigate Israel (likely not from the ICC itself but from the drafter of a potential resolution). However, as Kevin Jon Heller suggests, the Court should not investigate Israel if it is Syria that is referred to the ICC. Moreover, as with both previous UN Security Council referrals (Darfur in 2005 and Libya in 2011), any Syria referral will almost certainly preclude the Court from investigating citizens of states that are not members of the ICC (except, of course, Syria itself).

Some will surely see the administration's change in policy as nothing more than window dressing or, as Eugene Kontorovich calls it, "cheap talk". Western states have benefitted from blaming Russia for being a barrier to justice and peace in Syria. That ability is now strengthened. The decision to support a referral will allow the US to put even more rhetorical pressure on Russia whilst claiming that it is (now) on the right side of history and justice.

Still, it remains to be seen how the administration itself responds to questions regarding precisely why it changed positions. Perhaps it has simply run out of other options. It is unclear what, if any, recent events on the ground would compel such a change. Further, the matter of the ICC not investigating Israel as a result of its control over the Golan Heights could have been resolved, literally, years ago. Perhaps a clue lies in the fact that, earlier this week, the administration gave a Syrian opposition delegation diplomatic status.

So what happens next? In all likelihood very little. While it certainly hasn't helped much, the US hasn't been the primary barrier to an ICC referral in Syria. That distinction goes to Russia (China is very unlikely to veto a referral alone). Will the US' change in position shift Moscow's thinking? Probably not.

At the same time and as I've suggested previously, there remain concerns over what an ICC intervention in Syria would actually look like. There are serious allegations – and mounting evidence – that both sides (the government of Bashar al-Assad and the Syrian opposition) have committed war crimes and crimes against humanity. As the ICC's brief history shows, however, the Court tends to target only one side of the ongoing and active conflicts in which it intervenes (see here for reasoning). The effects of an asymmetrical judicial intervention in Syria at this point are unclear. More to the point, the problem with any UN Security Council referral is that there is no political consensus over which side the ICC should target. Until such a consensus is achieved, a referral remains unlikely if not impossible.

While we can debate the reasons, merits and wisdom of US support for a ICC referral in Syria, the Obama administration's change in policy should not be dismissed as irrelevant. As David Kaye is quoted in Lynch's piece, it may just be that "[o]nce the United States starts to get involved… it changes the conversation." What remains to be seen is what, exactly, that conversation is.

When it comes to preventing international criminal justice in Syria, it has taken two to tango. Now Russia is pretty much alone on the dance floor.

U.N. Security Council Referral of Syria to the International Criminal Court?
Lawfare
By John Bellinger ?
May 8, 2014

The New York Times reports that France has drafted a U.N. Security Council resolution referring the "situation" in Syria to the International Criminal Court that has been tailored "specifically to address American sensitivities" about the ICC. The Bush and Obama Administrations negotiated similar compromises when they agreed to Security Council referrals of human rights violations in Sudan and Libya to the ICC. These compromises demonstrate both the continuity in U.S. policy towards the ICC from administration to administration and how the U.S., while not a party to the Rome Statute, can work cooperatively with Rome Statute members to make use of the ICC in certain situations.

The draft resolution on Syria would purportedly limit the referral to the conflict between the Assad government, its allied militias, and armed opposition groups in order to avoid giving the ICC jurisdiction over potential Israeli activities in the Golan Heights. The resolution would also exempt "current or former officials or personnel" of countries that are not party to the Rome Statute (except Syria) in order to avoid covering any U.S. personnel that might ever be involved in humanitarian activities in Syria.

Similar language exempting U.S. personnel was also included in UNSCR 1970 (2011), which referred Qadaffi's human rights abuses in Libya to the ICC, and in UNSCR 1593, which referred the human rights atrocities in Darfur to the Court. UNSCR 1593, adopted in March 2005, reflected the beginning of the pivot towards a more pragmatic approach towards the ICC in the Administration's second term. Although some Administration officials opposed making any use of the ICC, President Bush concluded that he was more concerned about the atrocities in Darfur than by any theoretical risk to U.S. personnel.

When UNSCR 1593 was adopted, several Security Council members (including France) expressed their desire that the exemption for non-ICC members not be included in future resolutions. Later, many European governments expected that the Obama Administration would adopt a much warmer attitude towards the ICC; they had forgotten, however, that the United States during the Clinton Administration was one of only seven countries to vote against the Rome Statute and that President Clinton had said that he would not send it to the Senate for approval until U.S. concerns were addressed.

Even if the United States and other Security Council members can agree on language referring Syria to the ICC, Russia may still veto the resolution (and it may be the intention of France and the Obama Administration to force Russia to do so). Still, the Security Council referrals of Sudan and Libya (and potentially Syria) show that the U.S. can work with ICC members in appropriate situations to pursue international justice. Two years ago, on the tenth anniversary of the Rome Statute, I urged in the Washington Post that Congress amend the American Servicemembers Protection Act (including removing the silly authorization to use force to free U.S. servicemembers who might be imprisoned in the Hague) to provide more support to the Court in cases where justice for international atrocities cannot be achieved through other means.

The ICC in Syria: Three Red Lines
Justice in Conflict
By Mark Kersten
May 9, 2014

The world is abuzz with the news that that the Obama administration is finally willing to back a referral of Syria to the International Criminal Court (ICC). Will the US's volte face on an ICC intervention in Syria create ripe conditions for a UN Security Council referral? Probably not – or at least not yet. But there is also another issue at hand: if the Security Council does manage to refer Syria to the Court, should the ICC accept?

The ICC's relationship with the UN Security Council goes to the very heart of the politics of international justice. As I have written in a draft article on the subject (see here), the Court was originally created as an independent institution in the hopes that it could – and would – transcend the power-politics of the Council. However, in its first ten years, the Court has instead become increasingly close to the Council and affirmed its authority. Former Prosecutor Luis Moreno-Ocampo has gone so far as to claim that the ICC should be seen as a "new power for the Security Council".

This proximate relationship has come at a cost to the Court's independence and legitimacy. Drawing on the work of William Schabas, I have previously argued that it is the ICC's affirmation of Security Council power politics that lies at the root of the perception that the Court is biased against African states. Former senior ICC officials are also deeply concerned about the relationship between the Council and the Court. Christian Wenaweser, the former Assembly of States Party President, for example, argues that because of how damaging the relationship has been to the Court, the ICC should at least consider saying no to another Security Council referral. There is a belief – the wisdom of which can be debated – that Council referrals bestow legitimacy to the Court. Such referrals are seen as a recognition that the ICC's work matters to the mightiest of players in international politics. Again, though, this comes at a cost.

The ICC may not be able (or want) to say no to a Security Council referral. But here are three "red lines" that the Court should be wary of.

You, Not Us

Any referral of Syria to the ICC is likely to include an operative paragraph declaring that, with the exception of Syrians, no citizens of states that are not members of the ICC can be investigated or prosecuted by the Court. In all likelihood, it will be a copy-and-paste job from previous Security Council referrals. Both the referrals of Darfur (Resolution 1593 (2005)) and Libya (Resolution 1970 (2011)) included precisely this unfortunate stipulation. It has long bee recognized that placing such exemptions on the Court violates key principles of international law and politicizes the ICC. As Robert Cryer observed in an article on Resolution 1593,

"the legitimacy of the referral is impaired by the a-priori exclusion of non-party state nationals from the jurisdiction of the ICC…the point is not that the jurisdiction of the ICC will be significantly limited in a practical fashion, but that the exclusion of some states' nationals fails to respect the Prosecutor's independence and makes it difficult to reconcile the resolution with the principle of equality before the law. Some states' nationals, it would appear, are more equal than others."

It has also been debated whether the ICC would actually be bound to respect such exemptions. If the same exclusion is included in a Syria referral (and, given US insistence it surely will), the Prosecutor may be wise to finally come out and declare that this violates the very principles upon which international criminal law rests and clarify whether the Court considers itself legally bound by such exemptions.

And Specifically You

There is an ongoing danger that referrals – whether from states or the Security Council – represent attempts to focus the ICC's Prosecutor on specific groups or actors. This has happened on a number of occasions. The most blatant example came with the first-ever referral to the ICC. In 2003, the Government of Uganda referred the Lord's Resistance Army – and not the situation in Northern Uganda

– to the ICC. Notably, then Chief Prosecutor Luis Moreno-Ocampo requested that the referral be clarified. However, the Office of the Prosecutor still only targeted LRA commanders.

There are similar fears that the restrictions placed on Ukraine's acceptance of ICC jurisdiction may focus the Court on the current Government's adversaries. Ukraine's declaration accepting ICC jurisdiction restricts the ICC to investigating crimes between 21 November 2013 and 22 February 2014. Placing limits on the temporal jurisdiction of the ICC (i.e. the time period which the Court can examine) also helped shield Western states from scrutiny over their rather nefarious and possibly criminal political and intelligence relationships with the regime of Muammar Gaddafi.

There is every possibility that a potential referral of Syria will seek to do the same. There is no consensus on who the ICC should target in Syria. But every major power on the UN Security Council is backing someone – and someone they don't want to see ending up in The Hague.

Money, Money, Money

Both previous Security Council referrals to the ICC have explicitly prohibited the UN from providing any funds to the Court for its subsequent investigations. In other words, the ICC did the Council's bidding and was asked to foot the bill. This wouldn't be as offensive to proponents of the Court if the ICC didn't end up being virtually empty handed, without any major players from Darfur or Libya in its dock. As Louise Arbour recently observed,

This triumph of political weight could perhaps be overlooked if the justice dividends were overwhelming. But we're far from that. With the ICC receiving no additional support – financial, political or operational – even in cases which are brought into its jurisdiction by the might of the Security Council, I believe that in the end such politically tainted referrals do more harm than good. Expected to expand the reach of accountability, they in fact undermine it.

Importantly, domestic legislation (the American Servicemembers' Protection Act) explicitly prevents the US from providing funding to the ICC. Still, there should be a way to get around this by allowing the UN to fund any ICC investigation in Syria without any of that funding stemming from US contributions.

Fool Me Thrice?

It is understandable that the ICC previously welcomed two referrals from the Security Council. The Darfur referral represented a huge and positive step in the US's relationship with the Court. The Libya referral was seen as an opportunity for the ICC to tap into widespread international interest and attention – and perhaps have an immediate impact on the conflict. But, again, in both instances the ICC got fleeced. International interest in having anyone from Libya or any of the 'big fish' in Sudan in the ICC's dock is virtually non-existent.

Can the ICC afford to be used and abused by the Council again? Is there anything it can do to avoid being fooled into accepting a politically poisonous referral for a third time?

Schabas suggests that the ICC Prosecutor should "make a statement reminding the Security Council of the importance of neutrality in any resolution." However, this may be a risky proposition. As Alex Whiting argues, "there is a risk that if the Prosecutor starts talking about what the resolution should look like, she will (1) end up killing the momentum towards the resolution or (2) be accused of being political."

Still, unlike Darfur and Libya, the Office of the Prosecutor now has the time to develop a coherent and rigorous position regarding a Syria referral. And if the Prosecutor can't be proactive in ascertaining the political risks in accepting certain referrals, perhaps it is time that an independent referral review panel be set up advise the Court.

While it is extremely unlikely that the ICC would reject a referral of Syria, the ICC has a problem when it comes to its relationship with the Security Council. A potential Syria referral offers the opportunity to think critically and clearly about what, exactly, the Court wants that relationship to look like.

Officials and proponents of the ICC consistently reiterate that states need to respect the independence of the Court. But the ICC needs to respect its own independence too. Syria is a big test – not just for justice but the ICC itself.

Guest Post: Al Nashiri and the Existence of an Armed Conflict
Opinio Juris
By David Frakt
May 9, 2014

I wanted to weigh in on the debate between my esteemed colleagues Steve Vladeck, Peter Margulies and Kevin Jon Heller at Just Security, Lawfare and Opinio Juris, on the issue of the existence of an armed conflict at the time of Mr. Al Nashiri's alleged offenses and the critical questions of who should decide this issue, and when. Peter argues that this is a question of fact best decided by the panel of military officers who will serve as jurors in the military commissions. Al Nashiri's defense team asserts that this is a question of law and they are asking the D.C. District Court to rule that the attack on the USS Cole in Yemen in 2000 was not part of an armed conflict. As there was no armed conflict ongoing, so goes their argument, the law of armed conflict does not apply and his actions could not be considered a violation of the law of war; further, because military commissions are courts of limited jurisdiction with power only to try and punish violations of the law of war, the federal court should enjoin any further proceedings at Guantanamo. It should be noted that Al Nashiri has already raised this matter in a pretrial motion in the military commission, seeking to have the charges dismissed by the military judge on the grounds that the commission lacks jurisdiction over his alleged offenses because they did not take place in the context of an armed conflict. Judge Pohl declined to dismiss the charges, characterizing the issue as primarily a question of fact for the jury (Ruling AE104F). Judge Pohl also acknowledged that the question was a "jurisdictional question subject to purely legal determination" but claimed that he must make this determination using a "wide deference" standard." Applying this standard, he found that the Congressional authorization to try offenses that occurred prior to 9/11, coupled with the fact that charges had been filed by the prosecutor, referred to trial by the Convening Authority, and not withdrawn by the Secretary of Defense or the President was sufficient to establish the existence of an armed conflict at the time of the offenses for jurisdictional purposes. This determination is essentially tantamount to a finding that he considered there to be sufficient evidence to submit the question to a jury. However, he left open the possibility of reconsideration at a later time, presumably in the form of a motion for a directed verdict at the close of the prosecution's case.

In so ruling, Judge Pohl was following the precedent set in the two other Guantanamo military commissions to have gone to trial: U.S. v. Salim Hamdan, and U.S. v. Ali Hamza al Bahlul (in which I served as detailed defense counsel, although I did not put on any defense at Mr. al Bahlul's request). Both Judge Allred in Hamdan and Judge Gregory in Al Bahlul instructed the members that the existence of an armed conflict was an element of the offense that must be proven by the government beyond a reasonable doubt. This was consistent with the Manual for Military Commissions, which requires as an element that offenses occurred "in the context of an armed conflict." In both cases, the judge further instructed the jurors on factors to consider in determining whether a state of armed conflict existed and in both cases the military jury found that the offenses of which they convicted the accused did occur in the context of an armed conflict. Here are the verbatim instructions given to the jurors in U.S. v. Hamdan:

"With respect to each of the ten specifications before you, the government must prove beyond a reasonable doubt that the actions of the accused took place in the context of and that they were associated with armed conflict. In determining whether an armed conflict existed between the United States and al Qaeda and when it began, you should consider the length, duration, and intensity of hostilities between the parties, whether there was protracted armed violence between governmental authorities and organized armed groups, whether and when the United States decided to employ the combat capabilities

of its armed forces to meet the al Qaeda threat, the number of persons killed or wounded on each side, the amount of property damage on each side, statements of the leaders of both sides indicating their perceptions regarding the existence of an armed conflict, including the presence or absence of a declaration to that effect, and any other facts or circumstances you consider relevant to determining the existence of armed conflict.

The parties may argue the existence of other facts and circumstances from which you might reach your determination regarding this issue. In determining whether the acts of the accused took place in the context of and were associated with an armed conflict, you should consider whether the acts of the accused occurred during the period of an armed conflict as defined above, whether they were performed while the accused acted on behalf of or under the authority of a party to the armed conflict, and whether they constituted or were closely and substantially related to hostilities occurring during the armed conflict and other facts and circumstances you consider relevant to this issue.

Counsel may address this matter during their closing arguments, and may suggest other factors for your consideration. Conduct of the accused that occurs at a distance from the area of conflict can still be in the context of and associated with armed conflict, as long as it was closely and substantially related to the hostilities that comprised the conflict." U.S. v. Hamdan, official transcript at pp. 3752-53.

An almost identical instruction was given in U.S. v. al Bahlul: See, Official Transcript, U.S. v. al Bahlul, pp. 844-45.

Hamdan's commission found him guilty of material support to terrorism and Mr. al Bahlul's commission found him guilty of material support to terrorism, conspiracy and solicitation. These findings imply that the jurors found that there was an armed conflict in existence and that the acts took place in the context of that conflict. However, there is an important distinction between the charges in those two cases and the charges faced by Al Nashiri. The charge of which Hamdan was convicted alleged that his conduct took place "in Afghanistan and other countries, from in or about February 1996 to on or about November 24, 2001." The charges of which al Bahlul was convicted were alleged to have taken place "at various locations in Afghanistan and elsewhere from in or about February 1999 through in or about December 2001." Accordingly, the commission could have found them guilty based solely on conduct that occurred in Afghanistan after September 11, 2001, or even after the AUMF was passed a few days later, or even after the U.S. invaded Afghanistan a few weeks later. There is no disputing that the U.S. was engaged with an armed conflict with al Qaida in Afghanistan in November and December 2001. Mr. Al Nashiri's case is thus the first case in which the issue of the existence of an armed conflict between the U.S. and al Qaida prior to 9/11 and outside Afghanistan is squarely presented.

At Lawfare, Peter Margulies writes approvingly of submitting this question to a military commission, commenting:

"a specialized military tribunal may have insights that would be especially helpful to a reviewing court on the intensity and duration of violence that establish the existence of an armed conflict. Soldiers fight our wars; who better to take an initial cut at pondering what experiences on the ground distinguish war from peace?"

The problem with this argument is not that soldiers might not have insights on this question, but that such insights will not be provided to any reviewing court. Military commissions provide general verdicts: guilty or not guilty. So, whatever the jurors' thought processes might be, we will never have access to them. The only thing the reviewing court will have to review is the jury instruction, which undoubtedly will be very similar to the one given in Hamdan and al Bahlul. If Professor Margulies was referring to the insights of Judge Pohl, an Army Colonel, as noted above, he has already ruled on this issue, so the District Court already has the benefit of his views. Not only do I not see any benefit in giving this issue to the jury, but I believe having the jury make this determination is potentially harmful to the fairness of the process.

My first concern relates to the likely composition of the jury. The members of the commission are likely to be senior military officers, primarily in the rank of O-5 and O-6. All of them will likely have been on active duty continuously since prior to 2000. Thus, they will not come into the military commission without an opinion on the issue of whether the United States was in an ongoing armed conflict with Al Qaeda in 2000. As one who served on active duty in the Air Force from 1995 to 2005, for example, I have a very strong belief that we were not in an armed conflict with Al Qaeda in 2000, because, if we were, I surely would have heard something about it, and I never did. There are likely to be other commission members who share this belief. However, if any member expresses such a view during voir dire, he or she could be subject to challenge for cause by the prosecution as having a firm opinion on an issue that is to be determined during the trial. The defense, of course, would want to keep such a juror on the panel. But in order to rehabilitate such a juror, the defense would have to get the juror to agree to keep an open mind on the existence of whether there was an armed conflict in Yemen in 2000, a position directly contrary to the position that the defense will be advancing during the trial. At best, this puts the defense in an awkward position. At worst, it will result in a jury that is skewed in favor of the prosecution.

Another problem with leaving this issue to the factfinder is the possibility of inconsistent verdicts. A jury in one case could conceivably find that we were in a state of armed conflict with Al Qaeda in Yemen in 2000 and convict, and another military commission jury could find that we weren't, and acquit a similarly situated defendant. Of course, because military commissions provide general verdicts, we would not necessarily know that this was the reason for the acquittal, but there is something very troubling about the possibility that guilt or innocence hangs on the jury's interpretation of history, and not merely the provable conduct of the accused.

Although I have great confidence in the fairness of military juries and their fact-finding abilities, I think we are asking too much of a military jury to leave this issue up to them. In essence, assuming that there is strong evidence of Al Nashiri's involvement in the USS Cole bombing, the defense would have to argue to the jury something like this:

"Even if you are convinced beyond a reasonable doubt that the accused was responsible for this cowardly heinous attack which resulted in the deaths of 17 innocent U.S. sailors, nevertheless you must acquit him because this did not take place in the context of a non-international armed conflict but rather was simply a peacetime terrorist attack by a committed member of Al Qaida. The fact that we have been in a continuous global war with this organization since 9/11 is completely irrelevant because we were not technically in an armed conflict in Yemen in 2000."

However strong their commitment to the rule of law might be, it is difficult for me to fathom a jury comprised of senior U.S. military officers acquitting a proven al Qaeda terrorist on such a legal "technicality." And, in my view it is not reasonable to place a jury of military officers of sworn loyalty to the United States in a position where they would have to make such a choice. The existence of an armed conflict is a matter of international law and is therefore best determined by experts in the law. The D.C. District Court should not hesitate to take up the issue.

The Security Council Won't Even Go Dutch with the ICC on Syria
Opinio Juris
By Kevin Jon Heller
May 12, 2014

There are many reasons to be skeptical of the Security Council referring the situation in Syria to the ICC, not the least of which is that an ICC investigation is unlikely to accomplish anything given the ongoing conflict. (One that Assad is almost certainly going to win.) But just in case that's not enough, take a gander at this provision in the draft referral:

[The Security Council] recognizes that none of the expenses incurred in connection with the referral, including expenses related to investigations or prosecutions in connection with that referral, shall be

borne by the United Nations and that such costs shall be borne by the parties to the Rome Statute and those States that wish to contribute voluntarily and encourages States to make such contributions.

In other words, the UN just wants to refer the situation; it doesn't want to pay for the ICC's investigation. So much for Art. 115 of the Rome Statute, which provides that "[t]he expenses of the Court and the Assembly of States Parties… shall be provided by the following sources… Funds provided by the United Nations, subject to the approval of the General Assembly, in particular in relation to the expenses incurred due to referrals by the Security Council"…

I have previously urged the Prosecutor to refuse to open an investigation into the situation in Syria unless the Security Council is willing to fund it. The draft referral makes clear that the Security Council has no intention of doing so. In the unlikely event that the referral ever passes, I hope the Prosecutor will consider my suggestion.

Guest Post: Strong Words, Weak Arguments – A Response to the Open Letter to the UN on Humanitarian Access to Syria (Part 1)
Opinio Juris
By Naz Modirzadeh
May 12, 2014

There is no shortage of profound questions arising out of the armed conflict in Syria. Yet whether the reported United Nations legal analysis concluding that the UN needs the consent of the Syrian authorities before it can undertake humanitarian relief actions on Syrian territory is not one of them. As international law questions go, this one is relatively straightforward: Absent a sufficient Security Council decision authorizing intervention—a decision which has not been forthcoming, at least not yet—UN system bodies, funds, programmes, and specialized agencies need to obtain the consent of the Syria authorities before undertaking relief actions on Syrian territory.

You would be forgiven for being confused about whether there is a contested legal issue at stake if you had read the open letter sent on April 28th from 35 eminent legal experts (repeatedly referred to as "top international lawyers" in the press and in an increasingly loud Twitter campaign) to the UN Secretary General, Under Secretary General Valerie Amos, and the heads of the five UN humanitarian agencies.

US Senator Tim Kaine (who sponsored the Syrian Humanitarian Resolution of 2014) quickly capitalized on the letter and the caliber of its signatories, sending a letter to Secretary General Ban Ki-Moon stating that "continued inaction will only undermine the legitimacy and reputation of the UN." The Senator noted that while he supports a Chapter VII decision, he believes that "the UN already has the authority to act." He states,

"Based on the opinion of prominent international lawyers, the UN currently has the mandate and legal authority to organize a large coalition of international NGOs poised to deliver humanitarian aid to all areas of Syria. Anything short implies complicity with the Syrian government's continued violations of the basic principles of international law, and is shameful."

Strong words—and ones that raise the question of whether the prominent international lawyers who signed the letter anticipated being implicated in the suggestion that the UN's failure to essentially run the Syrian border against the government's explicit denial of consent suggests "complicity with the Syrian government's continued violations."

There are many actors with blood on their hands in the generational tragedy unfolding in Syria. In my view, the women and men of the UN's humanitarian agencies are not on that list. In this post, I would like to provide a close initial read of the letter (whose arguments have been quickly amplified by an advocacy and media campaigns). My sense is that this is a political argument dressed up in the language of IHL.

International Humanitarian Law

The letter frames its claims on the following argument:

"International humanitarian law is unequivocal that where a civilian population is in need of life-saving aid, impartial humanitarian action 'shall be undertaken'. In order to protect the sovereignty and territorial integrity of states, international law requires impartial humanitarian actors to seek the consent of the parties concerned. In February 2014, the UN Security Council unanimously adopted Resolution 2139 demanding that all parties, in particular the Syrian authorities, allow rapid, safe and unhindered humanitarian access across conflict lines and across borders. Yet such consent continues to be withheld. Because the Syrian Government has refused to consent to cross-border aid, the UN has not undertaken these vital operations for fear that some member states will find them unlawful.

As a coalition of leading international lawyers and legal experts, we judge that there is no legal barrier to the UN directly undertaking cross-border humanitarian operations and supporting NGOs to undertake them as well."

Let's take a closer look at this introduction.

Why has the UN decided to refrain from crossing the Syrian border? Because the UN does not have the consent of the Syrian government to do so—not because the UN is afraid that "some member states will find [vital, non-consensual cross-border aid operations] unlawful." Except under limited circumstances that do not apply here, international law requires the consent of the state before another state or the UN can enter into its sovereign territory. I am not clear that "fear" plays any role in this; nor am I certain that it is very helpful—and, indeed, it might be quite harmful—to paint UN humanitarian actors as spineless.

There is indeed a set of Security Council decisions demanding that the Syrian government allow and facilitate humanitarian access in accordance with IHL and the UN guiding principles of emergency humanitarian assistance. However, there is nothing in those Security Council decisions, in IHL applicable to the non-international armed conflict in Syria, nor in the referenced guiding principles that establishes that if Syria refuses to allow consent—even for arbitrary or capricious reasons—then relief actions may be taken by the UN without the state's consent. Where a state has failed to comply with a Security Council decision, it is up to the Council to decide how to react. Put another way, nothing in the relevant Security Council decisions, applicable IHL, or the guiding principles endows UN humanitarian bodies and agencies with the power to decide that Syria's lack of consent—again, even where that lack of consent is arbitrary or capricious—may be ignored.

Syria is a sovereign state. It has decided—claiming that one of its predominant security concerns is the threat of terrorists entering its territory—not to allow access in the manner that has been demanded by the Security Council. Whether or not Syria's claim is legitimate, the legal barrier of needing to obtain consent—a legal barrier not manufactured by the UN humanitarian bodies and agencies—remains.

The letter argues that there are three reasons why the UN's "overly cautious legal interpretation" of IHL is incorrect, and why there is "no legal barrier to direct cross-border" operations. Those are strong words based, I believe, in weak arguments. I will address each in turn.

"First, the United Nations clearly meets the first condition for legitimate humanitarian action, which requires it to respect the principles of humanity, neutrality, impartiality, and non-discrimination in delivering aid."

This statement strikes me as particularly strange—for, despite the UNGA guiding principles referenced by the Security Council, it is hard to talk of the United Nations as a single entity that clearly and across all relevant bodies respects the Red Cross/Federation principles, not least when it comes to Syria. Indeed, in many cases, numerous UN bodies, funds, programmes, and specialized agencies may not act as a

"neutral" party in a particular armed conflict. While in Syria the UN has attempted to broker a political agreement between the parties, it has left certain parties out of the negotiations. This is not a criticism of the United Nations—it is the reality of the organization. Moreover, UN involvement in Libya, Sudan (and, later, South Sudan), and DRC make it difficult to argue that the Syrian authorities would be unreasonable in questioning whether full UN access would benefit the opposition. In any event, perhaps the authors meant to say "the humanitarian bodies and agencies of the United Nations," but as it stands, the statement is confusing, misleading, and, in important respects, inaccurate.

The next argument:

"Second, in many of these areas various opposition groups, not the Syrian Government, are in control of the territory. In such cases, the consent of those parties in effective control of the area through which relief will pass is all that is required by law to deliver aid."

I am not aware of any persuasive legal argument that supports the claim that the consent of non-state armed actors is "all that is required by law to deliver aid" in states where the government continues to function. This is not the case in IHL. If there is some other law that the authors are referring to, I am not certain what it might be.

Syria is not a party to Additional Protocol II, so we have to turn to Common Article 3 and customary IHL to discern the applicable IHL standards. Common Article 3 states, "The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict." There are very few scholars (and no states that I am aware of) who have argued over the years that Common Article 3 implies not only that humanitarian actors may offer their services but that an organized armed group could then accept this offer as the legal basis for relief actions against the denial of consent by the state.

Article 18 of Additional Protocol II—which, again, does not apply as treaty law since Syria is not a party to AP II—states that "if the civilian population is suffering undue hardship" relief actions "of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned."

In its Study on Customary IHL, the ICRC found a rule binding in both IAC and NIAC such that, "The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control." It is far from clear, however, that states accept the ICRC's formulation—especially the notion of parties' (including, implicitly, armed groups') "right of control"—as reflecting customary IHL.

The UK Manual on the law of armed conflict, for instance, states in a footnote in its section on internal armed conflict that, "International intervention by humanitarian organizations is seen as a last resort and again is subject to the consent of the state concerned." (Emphasis added) The Manual goes on to note that "the withholding of consent could in itself be a breach of AP II, Art. 14." Yet Syria is not a party to AP II, and, moreover, even if AP II were applicable, a breach of Art. 14 does not render a relief action undertaken by the UN without consent into a lawful action—it triggers the state's responsibility for the breach. Some may argue that the wrongfulness of unauthorized operations, while violating Syria's sovereignty and territorial integrity, may nonetheless be precluded in exceptional circumstances by the principle of necessity. But this is apparently far from the dominant view of states, and in any event would be applicable only with respect to a small subset of activities—such as "a one-off relief operation to bring lifesaving supplies to a population in a specific location in extreme need, when no alternative exists"—not with respect to the size of planned UN actions.

Even if Common Article 3 is interpreted such that non-state actors could give consent to enter territory they control on the territory of a sovereign state, I am not aware of any persuasive interpretation that suggests that such groups could give consent for outsiders to cross an international border in order to do

so. At most, this notion contemplates a situation where humanitarians are already inside the country and are seeking access to particular areas controlled by armed groups, as we have seen in, for example, Colombia, Sri Lanka, Afghanistan, Lebanon, and other contexts. This is a very important distinction. The letter authors appear to be suggesting that, for example, ISIS in one area, Jabhat al Nusra in another, and the Southern Front in yet another could grant consent to humanitarian actors to cross from the territory of one state into Syria without the consent (and attendant visas, permits, licenses, and security measures) of the state. This strikes me as quite distinct from an armed group granting consent for groups to enter a particular area they control to humanitarians already in the country.

The authors are of course free to argue that IHL should say this. But it undermines the UN and sells its lawyers short to suggest that the consent of ISIS or Jabhat al Nusra or the FSA or the Southern Front is "all that is required" for UN humanitarian bodies and agencies to cross from another country into Syria.

The letter continues,

"Third, under international humanitarian law parties can withhold consent only for valid legal reasons, not for arbitrary reasons. For example, parties might temporarily refuse consent for reasons of 'military necessity' where imminent military operations will take place on the proposed route for aid. They cannot, however, lawfully withhold consent to weaken the resistance of the enemy, cause starvation of civilians, or deny medical assistance. Where consent is withheld for these arbitrary reasons, the relief operation is lawful without consent."

The last sentence of this paragraph is astonishing—and not only because it is legally inaccurate, but also because it is not clear what, if it were legally tenable, this could possibly look like on the ground. Humanitarian actors are unarmed and rely on negotiation, trust, and dialogue to move between fighting lines and access populations in need. They are not commandos. They do not have fighter jets.

I am not aware of any (let alone enough to establish a customary rule) state practice accompanied by opinio juris, any court decision, or any widely accepted legal commentary that establishes that even if the Syrian authorities arbitrarily or capriciously deny consent for humanitarian access in the ongoing non-international armed conflict there, then consent is no longer required.

As for the position of NGOs, they are "not subjects of international law so cannot violate a state's sovereignty or territorial integrity. Instead, unauthorised operations do not benefit from the safeguards of [IHL] and staff may face proceedings under national law." (to be continued)

Guest Post: Strong Words, Weak Arguments – A Response to the Open Letter to the UN on Humanitarian Access to Syria (Part 2)
Opinio Juris
by Naz Modirzadeh

Part 1 can be found here.

Humanitarian Concerns

Perhaps as significant as the legal errors in the letter, the authors seem to take no account of the security implications of their recommendation. Given its actions thus far, including its attacks on its own population and many medical humanitarians, it would not be at all shocking if Syrian forces attacked convoys that crossed the border without consent. Without any security arrangements with the state, or communication with the government regarding entry of convoys and staff, humanitarian personnel on the ground in Syria would be operating in violation of Syrian law. Many humanitarian actors, perhaps most vocally USG Amos, have commented on the many armed groups who control and seek to control access in rebel-held areas. Should the UN announce that it was entering Syria without the consent of the government (and indeed in the face of government denial of consent), how would it ensure the safety of

humanitarian actors and beneficiaries vis-à-vis non-state armed groups? Whose "consent" would satisfy the authors of the letter? Only some armed groups? Any groups that control territory, regardless of their role in the rebellion? What about Raqqa?

It is hard to imagine how any state would support such a notion: would Yemen allow AQAP to provide independent consent to Saudi Arabian relief agencies to enter Yemeni territory in order to provide humanitarian assistance? Would Lebanon allow Iran to enter southern Lebanon to provide assistance to Hezbollah-held territory? (For that matter, would Lincoln's government have allowed British-backed relief groups to enter the southern territories to provide humanitarian assistance based only on Confederate consent?) It is also critical to remember that those who are asking the United States and European states to aggressively back the UN and humanitarian NGOs to enter Syria without the government's consent are asking governments who are openly and actively supporting the Syrian rebellion to overthrow the Syrian government. Moreover, despite what seem to be an array of arbitrary and capricious denials of consent by the government of Syria, it would be peculiar, and approaching hypocritical, for the U.S. and Europe not to recognize that many of the Syrian denials of consent stem from security concerns involving "terrorists." While the U.S. and Europeans may disagree on whether all of the individuals designated by the Syrian government are in fact terrorists, the U.S. and Europeans are themselves deeply concerned about certain terrorist groups operating in Syria, including their own citizens who may return home.

Political Backdrop

I have heard from many colleagues in the humanitarian and human rights fields that as soon as the letter came out, they received angry messages from staff demanding to know why more INGOs have not stood up to support the letter and criticize the UN. My sense has been that since the letter was published, there has been increasing confusion regarding the legal and political dimensions of the question of cross-border movement in the absence of state consent, and that in important respects this question is being misunderstood as a matter primarily of IHL interpretation. The imprecision of the letter's arguments strike me as having real consequences in the current environment.

Perhaps foretelling an emerging view, Kaine continues,

Since the United States remains the largest single donor of humanitarian assistance in the world, I intend to push strongly for the disbursement of those relief funds in a way that ensures aid will reach the people most in need, including across borders. I support conversations with other like-minded countries to explore ways within the UN structure, or outside of it, to ensure more cross border aid is delivered. I also call on the UN to involve NGOs in discussions related to the planning of aid convoys, aid delivery mechanisms, and implementation of 2139.

IHL provides a very delicate system supporting humanitarian assistance during armed conflict. It is far from the strongest part of the law, and humanitarian actors have struggled to develop tools from within IHL that will assist them in negotiating with intransigent governments and non-state actors alike. It strikes me that approaches like the one captured in this letter and in some advocacy campaigns could have implications far beyond Syria: giving states the message that humanitarian actors may use humanitarian access in IHL as a means for intervention, or that they will not genuinely seek consent before they begin operations.

A Security Council decision to intervene—whether based on the doctrine of the responsibility to protect, or a recognition on the part of the international community that Syria's horrific actions otherwise threaten international peace and security—may provide a strong basis for relief operations absent the consent of the government. But these relief operations may need to be conducted by state-backed actors who are able to aggressively defend their own security and the security of civilians (read: not humanitarian agencies). Or, intervention may open up access, as has occurred in other recent conflicts, for humanitarian actors to enter the country. But neither of these will occur due solely to an interpretation of IHL. The decision to violate Syria's sovereignty in order to save civilian lives may be made either by the Security Council or by a

group of states that decide that the need to stop the crisis outweighs the general international legal prohibition on intervention. It would be, in my view, both dangerous and inappropriate for the UN's humanitarian agencies to make such a choice on their own, exposed to the full force of the conflict.

I emphasize that none of my comments should be understood as suggesting that NGOs and INGOs cannot and should not cross the Syrian border without the government's consent. It would likely not be lawful for them to do so under Syrian law, but in my view the UN humanitarian agencies are differently situated than their NGO counterparts when assessing whether they can and should violate Syrian law, and take the attendant security risks in order to enter rebel-held areas. Nor should my comments be understood as in any way supporting the Assad government's policies or decisions. However, I believe that political arguments should be made as political arguments.

Conclusions

As I have argued elsewhere, this increasing impulse in advocacy circles may have unanticipated consequences for the long-term goals of those who seek to protect civilians and fighters hors de combat in armed conflict.

It is entirely laudable for a group of eminent scholars and former UN experts to suggest—even demand—that the Security Council should take a firm stand, and make a decision under its Chapter VII authority forcing the Syrian government's hand. They could even argue that the time has come for intervention (though I would suggest that it would be inappropriate for humanitarian organizations to be placed at the frontline of such an intervention). In short, this is not an IHL problem. The inability of the United Nations to establish itself in a country that has not given its consent for such presence is not based on a faulty interpretation of IHL.

While many INGOs, NGOs, and Syrian groups are frustrated with UN inaction or failure of coordination (as demonstrated in an April 16 report from a group of NGOs working in Syria articulating criticisms of UN leadership), my sense is that it is important for INGOs to understand the difference between an official UN position and operational decisions made by INGOs already active on the border. This situation may become further sensitive as some donors may redirect funds from UN agencies to INGOs, publicly announcing that they are doing so due to their disagreement with the UN's legal position. It may be worthwhile for these donors, should they find themselves participating in a non-international armed conflict, to recall that the UN's approach reflects settled and clear international law, and that it further reflects these donors' own legal positions.

The ICC may not bring justice to Syria
The Washington Post
By Mark Kersten
May 12 at 9:58 am

Calls for justice and accountability in Syria emerged as swiftly as the civil war itself. But after three years of brutal bloodshed, unsuccessful mediation and perhaps the worst ongoing humanitarian crisis in the 21st century, justice has remained evasive. The United Nations Security Council has been locked in a stalemate – not only on how to end the conflict, but how and when to pursue accountability for atrocities committed during the civil war. With the Obama administration throwing its support behind a draft Security Council resolution referring Syria to the International Criminal Court (ICC), many believe – and hope – that the deadlock on justice may soon be broken.

Proponents of the court are undoubtedly excited about the prospects of an ICC intervention in Syria. Facing obvious pushback from the Security Council, many, including former ICC chief prosecutor Luis Moreno-Ocampo, had previously concocted creative approaches to getting the court involved. Now their hope is that the council will grant the court the ability to open an investigation into crimes committed in Syria.

But the growing feasibility of a referral calls for sober reflection. Pursuing international criminal justice in Syria is a much more complex affair than it may first appear. At least three separate, albeit related, questions need to be answered: What does the change in U.S. policy mean with regards to a potential referral of Syria to the ICC? Is an ICC intervention into the ongoing conflict a good idea? And, if requested to do so, should the ICC intervene in Syria?

First, does the U.S. administration's volte-face really change anything? There are two competing opinions on the matter. First, some believe that the United States' much delayed support for a referral of Syria to the ICC is simply political grandstanding. Knowing that Russia (and perhaps China) will veto any referral, the cost of throwing support behind the ICC is low, but the benefits are high: Being able to slam Russia as being on the wrong side of history – and justice. Conversely, the Obama administration's change in position can be seen as a "conversation changer." While it may not automatically translate into a referral, it is an obvious and necessary condition for eventually having Syria investigated by the ICC. There is no denying that there can be no backtracking on the part of the United States and that the discussion of an ICC referral has been reinvigorated.

No one, however, is willing to suggest a referral is forthcoming – at least not any time soon. The most obvious barrier is Russia's recalcitrance. However, there is also another reason why the ICC is unlikely to be asked to investigate Syria. There is widespread recognition – and growing evidence – that both the Syrian government and Syrian opposition forces have committed war crimes. In order for the Security Council to agree to a referral, there needs to be a consensus within the council on precisely whom the ICC should target for prosecution. Previous investigations demonstrate that the court tends to target only one side of the ongoing and active conflicts in which it intervenes (see here for reasoning). Without a consensus on the council as to who should be targeted, it is hard, if not impossible, to imagine a referral being achieved.

Second, would it be wise to refer Syria to the ICC? Proponents and critics of the court have long engaged in the so-called "peace versus justice" debate. While the ICC's supporters believe that the court can have positive effects on conflict resolution and that justice is absolutely necessary for establishing and maintaining peace, critics argue that international criminal justice can undermine peace processes and prolong violence. These fears have been played out in every ICC intervention into an ongoing and active conflict.

The truth is that we don't know as much as we would like to about the effects of the ICC on conflict resolution. The claims made by both sides within the "peace versus justice" debate tend to be persuasive and intuitive. But the effects of the ICC are also often overstated. Had the court intervened in Syria two years ago, would the current situation be any worse? The negative effects attributed to the court's interventions – that ICC targets will fight to the bitter end, that the conflict will become protracted and that negotiations will flounder – have all been realized – without any help from the court!

Third, would it be good for the ICC itself to intervene in Syria? Few issues have defined the first 10 years of the ICC's existence more than its relationship with the Security Council. The court was created, in part, in order to transcend the power politics of the council. To date, however, it has done quite the opposite.

The Security Council has previously referred two situations to the ICC – Darfur in 2005 and Libya in 2011. In both instances the council severely restricted – and politicized – the court's mandate. Both referrals exempted citizens of states that are not members of the ICC from the court's jurisdiction. Both referrals guaranteed that the ICC would be saddled with the entire financial burden of any subsequent investigation. In both cases, the ICC focused primarily on consensus opponents of the council: The government of Omar al-Bashir in Sudan and the Gaddafi regime in Libya. Moreover, and this is the real kicker for the court, in both cases the ICC ended up empty-handed, without a single "big fish" from either situation in its dock.

Any referral of Syria to the ICC would seek to repeat all three of these conditions: Exempting citizens of non-state parties from investigation or prosecution; ensuring that the court foot the bill for its work at the

behest of the council and prodding the ICC to focus on specific targets. To varying degrees, these conditions all hinder the capacity, legitimacy and independence of the court. History suggests that the ICC also tends to be fleeced – with the vast majority of those it targets as a consequence of Security Council referrals evading justice and council members lackadaisical about enforcing arrest warrants.

This is not to say that the ICC should reject a referral. It shouldn't. And given what it would say to victims in Syria, it is impossible to think that it would. But there is a need, on the part of the court's supporters and especially the ICC's prosecutor, to think very clearly about the costs of another highly politicized referral. Officials and proponents of the ICC consistently reiterate that states need to respect the independence of the court. But the ICC needs to respect its own independence too. Syria is a big test – for justice and for the ICC itself.

Full Draft: UN Resolution Referring Syria to the ICC
Justice in Conflict
By Mark Kersten
May 12, 2014

The Security Council,

Recalling its resolutions 2042 (2012), 2043 (2012), 2118 (2013) and 2139 (2014), and its Presidential Statements of 3 August 2011, 21 March 2012, 5 April 2012 and 2 October 2013,

Reaffirming its strong commitment to the sovereignty, independence, unity and territorial integrity of the Syrian Arab Republic, and to the purposes and principles of the Charter of the United Nations,

Recalling its full endorsement ofthe Geneva Communiqué of 30 June 2012 which states that accountability for acts committed during the present conflict in the Syrian Arab Republic must be addressed,

Taking note of the reports of the independent international commission of inquiry on the Syrian Arab Republic, mandated by the Human Rights Council to investigate all alleged violations of international human rights law since March 2011 in the Syrian Arab Republic, to establish the facts and circumstances that may amount to such violations and of the crimes perpetrated and, where possible, to identify those responsible with a view to ensuring that perpetrators of violations, including those that may constitute crimes against humanity, are held accountable,

Recalling the statements made by the Secretary-General and the United Nations High Commissioner for Human Rights that crimes against humanity and war crimes are likely to have been committed in the Syrian Arab Republic,

Noting the repeated encouragement by the United Nations High Commissioner for Human Rights for the Security Council to refer the situation to the International Criminal Court,

Determining that the situation in the Syrian Arab Republic constitutes a threat to international peace and security,

Acting under Chapter VII of the Charter of the United Nations,

Reaffirms its strong condemnation of the widespread violations of human rights and international humanitarian law by the Syrian authorities and pro-government militias, as well as the human rights abuses and violations of international humanitarian law by non-State armed groups, all committed in the course of the ongoing conflict in the Syrian Arab Republic since March 2011;

Decides to refer the situation in the Syrian Arab Republic described in paragraph 1 above since March 2011 to the Prosecutor of the International Criminal Court;

Decides also that the Government of the Syrian Arab Republic, shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor, including by implementing fully the Agreement on the Privileges and Immunities of the International Criminal Court, pursuant to this resolution and, while recognizing that States not party to the Rome Statute have no obligation under the Statute, strongly urges all States and concerned regional and other international organizations to cooperate fully with the Court and the Prosecutor;

Demands that non-State armed groups in the Syrian Arab Republic also cooperate fully with and provide any necessary assistance to the Court and the Prosecutor in connection with investigations and prosecutions undertaken pursuant to this resolution;

Expresses its commitment to an effective follow up of the present resolution, in particular regarding issues of cooperation, arrest and transfer to the International Criminal Court of persons against whom arrest warrants are issued;

Recalls the guidance issued by the Secretary General on contacts with persons who are the subject of arrest warrants or summonses issued by the International Criminal Court; Decides that nationals, current or former officials or personnel from a State outside the Syrian Arab Republic which is not a party to the Rome Statute of the International Criminal Court shall be subject to the exclusive jurisdiction of that State for all alleged acts or omissions arising out of or related to operations in the Syrian Arab Republicestablished or authorized by the Council, unless such exclusive jurisdiction has been expressly waived by the State;

Recognizes that none of the expenses incurred in connection with the referral, including expenses related to investigations or prosecutions in connection with that referral, shall be borne by the United Nations and that such costs shall be borne by the parties to the Rome Statute and those States that wish to contribute voluntarily and encourages States to make such contributions;

Invites the Prosecutor to address the Council within two months of the date of adoption of this resolution and every six months thereafter on actions taken pursuant to this resolution and requests the Secretary-General to circulate the report of the Prosecutor as a document of the Council, in advance of such briefings,

Decides to remain seized of the matter.

Circling Back to that Existence of Armed Conflict Discussion
Opinio Juris
by Deborah Pearlstein

Last week saw a set of posts, across the law-and-security blogs, about whether an armed conflict existed at the time current commission defendant Abd Al Rahim Hussayn Muhammad Al Nashiri was allegedly involved in planning the October 2000 bombing of the U.S.S. Cole. See, e.g., Frakt, Vladeck, Heller, and Margulies. While I've written about this at length elsewhere, after reading the posts, I find myself disagreeing (at least in part) with pretty much all of my friends on the question of who can/must decide the answer to the existence-of-armed-conflict question. Here's my thinking.

First, in the context in which the issue arises in U.S. military commissions, the question is one of both law and fact. Why a question of law? Because as a matter of U.S. domestic law, the military commissions' jurisdiction extends only to persons subject to trial under the MCA, namely "alien unprivileged enemy belligerents," a term defined by the statute to include three types of defendant. The first two include defendants who "engaged in hostilities against the United States or its coalition partners," or who have

"purposefully and materially supported hostilities against the United States or its coalition partners." In cases involving such defendants, unless the defendant is alleged to have engaged in or supported "hostilities" as defined by the law of war, the commissions lack jurisdiction to proceed. The third category of defendant over whom the military commission may have jurisdiction – an individual who was "a member of Al Qaeda" when the alleged offense was committed – does not by its terms require a finding of hostilities. But even where the existence of hostilities is not part of the statutory requirement for jurisdiction, commission jurisdiction remains subject to limits imposed by the U.S. Constitution. As the Supreme Court has noted, military commissions may substitute for civilian trials or traditional military justice processes to prosecute only those acts "incident to the conduct of war," for events occurring "within the period of the war." In this setting, commissions are only constitutionally permissible when the offense alleged was "committed … during, not before, the relevant conflict." The need to consider the existence of war in some fashion is thus unavoidable in establishing commission jurisdiction.

But with regrets to commission defense counsel, the MCA also, separately, presents the existence of hostilities as a (again separate) question of fact. For the MCA also provides that the war crimes offenses it enumerates are triable by military commission "only if the offense is committed in the context of and associated with hostilities." It is thus necessary to prove the existence of hostilities as an element of each charging offense. However capable a jury may or may not be of making this determination (and I'd give juries, even commission juries, at least as much credit in making this factual determination as I'd give them in making other complex factual determinations), the requirement that it be proven to a jury beyond a reasonable doubt is one we should embrace if for no other reason than that the U.S. Constitution requires that all elements of criminal offenses be proven by the prosecution beyond a reasonable doubt. (See, e.g., Apprendi v. New Jersey and many other Supreme Court cases on this point.) True, the Supreme Court has never squarely held that any part of the U.S. Constitution other than the Suspension Clause applies to aliens at Guantanamo. But I think it both consistent with Court precedent (Boumediene at the least) and enormously important to whatever legitimacy commissions may retain that such basic rights are recognized to apply in these war crimes trials. So could the presiding officer (the commission equivalent of a judge) determine "hostilities" or "the relevant conflict" were sufficient to establish its jurisdiction, and the members then conclude after trial that the prosecution had not succeeded in proving the existence of hostilities as an element of the offense? In principle, I suppose, yes. But while the executive might plausibly (though I think wrongly) argue to a court that he is entitled to interpretive deference of some sort on whether "hostilities" exist within the meaning of the MCA jurisdictional provision (which directs us, I agree, to the multi-factor test set forth in Tadic and elsewhere), there can be no such plausible claim of deference in establishing the existence of hostilities as an element of the offense. In any criminal prosecution, the Constitution insists that an independent jury, not the executive, serve as a neutral finder of fact. Ceding to the executive the effective power to determine the presence of this circumstance (by the court deferring on the existence of key facts, or by making the executive's own statements of the existence of hostilities at the time dispositive of their existence) would present a grave constitutional question, effectively relieving the prosecuting power of its obligation to prove a key element of the defendant's guilt. To my knowledge, the Court has never tolerated such an outcome (in civilian or military trial, in wartime or out), and it can't be the right answer here.

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WORTH READING

The Practice of Apartheid as a War Crime: A Critical Analysis
By Paul A. Eden
April 30, 2014

> **The human suffering caused by the political ideology of apartheid in South Africa during the Apartheid era (1948-1994) prompted worldwide condemnation and a variety of diplomatic and legal responses. Amongst these responses was the attempt to have**

apartheid recognized both as a crime against humanity in the 1973 Apartheid Convention as well as a war crime in Article 85(4)(c) of Additional Protocol I. This article examines the origins, nature and current status of the practices of apartheid as a war crime and its possible application to the Israeli-Palestinian conflict.

Presumed Imminence: Judicial Risk Assessment in the Post-9/11 World
By Avidan Cover
May 6, 2014

Court opinions in the terrorism context are often distinguished by fact-finding that relates to risk assessment. These risk assessments — inherently policy decisions — are influenced by cultural cognition and by cognitive errors common to probability determinations, particularly those made regarding highly dangerous and emotional events. In a post-9/11 world, in which prevention and intelligence are prioritized over prosecution, courts are more likely to overstate the potential harm, neglect the probability, and presume the imminence of terrorist attacks. As a result, courts are apt to defer to the government and require less evidence in support of measures that curtail civil liberties. This Article explores the body of behavioral applied science on biases and cognitive errors and examines post-9/11 case law through that discipline's lens. The Article offers solutions for how courts should reach decisions that are less susceptible to psychological and cultural biases. In particular, courts should require the government to provide specific evidence supporting restrictions on civil liberties rather than accept speculative justifications. In addition, courts should disclose their anxiety and uncertainty over their own risk assessments, rather than cloaking them in empirical facts, the objectivity of which is always contested.

The Right to Exist and the Right to Resist
By Jens David Ohlin
May 13, 2014

Although self-determination is rightly regarded as one of the highest collective rights protected by the UN Charter, there is precious little positive law outlining the scope and content of this right because courts rarely pass judgment on claims regarding self-determination. This Essay makes three elementary points regarding the core right of self-determination. First, although the right of self-determination has been inhibited by uncertainty surrounding its connection to the abstract concept of peoples or nations, these entities can be defined either through self-perceptions or other-perceptions, and either is sufficient to ground the right of self-determination. Second, the right of self-determination belongs to a cluster of legal rights, including the right to be free from aggression and genocide, which emerge from two natural rights: the right to exist and the right to resist autonomy-threatening attacks. Although one might think that a right of resistance is necessarily an outgrowth of the more primary right to exist (since resistance might be an instrumental method of securing

existence), the following Essay denies this common-sense intuition. This brings us to the third claim: the right of resistance is an independent, neo-Kantian right regarding the autonomy of collective groups, such as nations or peoples, that is not reducible to the right to exist. The primary argument for its theoretical independence stems from a discussion of cases of futile self-defense, where it is certain that resistance will not achieve the continued existence of the defender. But even in such cases where annihilation is inevitable and existence cannot be protected, the right of resistance persists.

Farewell 'Specific Direction': Aiding and Abetting War Crimes and Crimes Against Humanity in Perisic, Taylor, Sainovic, et al., and US Alien Tort Statute Jurisprudence
By Manuel J. Ventura
May 13, 2014

In Perišić, the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) held that aiding and abetting liability required, in the actus reus, that the accused not only substantially contributed to the commission of crimes, but that, in addition, because of Perišić's remoteness, the accused's actions needed to be specifically directed towards such crimes (together with the mens rea). This, inter alia, led to the complete acquittal of Perišić. That controversial holding set off a chain of legal events that practitioners and academics have dubbed the 'specific direction saga' that ran its course through the Special Court for Sierra Leone (SCSL) and the ICTY, resulting in specific direction's repudiation by the Taylor and Šainović et al. Appeal Judgments respectively. This chapter presents in some detail the analysis of each of these judgments on the matter and offers a critique of the legal analysis and practical problems underpinning specific direction à la Perišić. In addition, the author highlights that specific direction (as 'purpose' in the mens rea) at international law had already been litigated in the United States (US) in Alien Tort Statute cases prior to Perišić, resulting in a similar domestic schism that remains unresolved to this day. However, the analyses of US courts remained underappreciated and/or unacknowledged by the aforementioned judgments of the SCSL and the ICTY, notwithstanding the fact that they were directly on point. The author concludes that specific direction's rejection was correct and that given the weight of the authorities, it is highly unlikely that specific direction will ever again be part of the substantive law of the ad hoc tribunals.

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