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2 messages

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Horizontal CWRU Law School Logo.jpg

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War Crimes
Prosecution
Watch

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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 **warcrimeswatcheditors@case.edu** and type "subscribe" in the subject line.

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Contents

AFRICA

CENTRAL AFRICA

Sudan & South Sudan

- **Sudan: Atrocities ‘repeated town by town’, ICC prosecutor tells UN Security Council (UN**

News)

Democratic Republic of the Congo

- Belgian court reopens Patrice Lumumba murder case (Africanews)

EUROPE

Court of Bosnia & Herzegovina, War Crimes Chamber

- Bosnian Serb Serving Genocide Sentence Indicted Again for War Crimes (Balkan Insight)
- Bosnian Court Indicts Four Over War Crimes in Music School (Balkan Insight)

International Criminal Tribunal for the Former Yugoslavia

- The Last ICTY Case Completed in The Hague (SENSE Center)

Kosovo Specialist Chambers

- Trial of former KLA leaders, Kosovo Specialist Chambers in The Hague announce when the closing statement will be held! (Vox)

Council of Europe's Special Tribunal for the Crime of Aggression Against Ukraine

- Russia's war against Ukraine: the fight against impunity (Council of the EU and the European Council)

MIDDLE-EAST

Syria

- Syrian refugee on trial in Germany over Islamic State killings (Yahoo News)

ASIA

War Crimes Investigations in Myanmar

- UN World Court begins landmark hearings on Rohingya genocide case against Myanmar (UN News)
- Myanmar tells World Court Gambia has not proven Rohingya genocide case (Reuters)

AMERICAS

Venezuela

- Venezuela: UN Fact-Finding Mission expresses grave concern following US military intervention and calls for accountability for human rights violations and crimes (United Nations Human Rights Office of the High Commissioner)

TOPICS

Commentary and Perspectives

- The ICC's Residual Jurisdiction & the Situation in the Philippines (EJIL: Talk)
- Judging War: The Legitimacy of International Courts in Armed Conflicts (Just Security)

WORTH READING

- To Kill or Not to Kill – the Use of Force against Legitimate Targets in Armed Conflicts (Wroclaw Review of Law, Administration & Economics)

AFRICA

CENTRAL AFRICA

Sudan & South Sudan

Official Website of the International Criminal Court
ICC Public Documents - Situation in Darfur, Sudan

Sudan: Atrocities 'repeated town by town', ICC prosecutor tells UN Security Council (UN News) By Vibhu Mishra
January 19, 2026

Briefing ambassadors, ICC Deputy Prosecutor Nazhat Shameem Khan said the situation in Darfur had "darkened even further," with civilians subjected to what she described as collective torture amid a widening war between Sudan's rival military forces.

"The picture that is emerging is appalling: organised, widespread, mass criminality including mass executions," Ms. Khan said. "Atrocities are used as a tool to assert control."

Epicentre of 'profound suffering'

Sudan has been engulfed in conflict since April 2023, when fighting erupted between former allies the Sudanese Armed Forces (SAF) and Rapid Support Forces militia (RSF).

What began as a power struggle metastasised into conflicts across the country, most devastating in the Darfur region, which also saw longstanding ethnic tensions – which prompted allegations of genocide in the early 2000s – being reignited.

She said the fall of North Darfur's regional capital El Fasher to the RSF had been followed by a "calculated campaign of the most profound suffering," particularly targeting non-Arab communities.

The crimes, she said, include rape, arbitrary detention, executions and the creation of mass graves, often filmed and celebrated by perpetrators.

Fighters 'celebrating executions'

Based on video, audio and satellite evidence collected, the ICC Prosecutor has concluded that war crimes and crimes against humanity were committed in El Fasher, particularly in late October, following a prolonged RSF siege of the city.

Ms. Khan said video footage showed patterns similar to those documented in earlier atrocities in Darfur, including the detention, mistreatment and killing of civilians from non-Arab tribes.

"Members of the RSF are seen celebrating direct executions and subsequently desecrating corpses," she said.

El Geneina investigations

The Office of the Prosecutor is also advancing investigations into crimes committed in El Geneina, where witnesses have provided accounts of attacks on displacement camps, looting, gender-based violence and crimes against children.

In 2023, El Geneina witnessed some of the worst violence of the war as RSF fighters and allied militias carried out massacres against the Massalit community, forcing hundreds of thousands to flee into neighbouring Chad.

UN officials and human rights investigators described the violence as ethnically motivated and warned of possible crimes against humanity.

Evidence now indicates that the patterns of atrocities seen in El Geneina have since been replicated in El Fasher, Ms. Khan said.

"This criminality is being repeated in town after town in Darfur," she warned. "It will continue until this conflict, and the sense of impunity that fuels it, are stopped."

Rape as a weapon of war

Sexual violence, including rape, is being used as a weapon of war, Ms. Khan said, adding that gender-based crimes remain a priority for ICC investigations. She acknowledged cultural and security barriers that prevent survivors from reporting abuse, stressing the need for gender-sensitive and survivor-centred investigations.

While much of the briefing focused on RSF abuses, the Deputy Prosecutor said the ICC was also documenting allegations of crimes committed by the Sudanese Armed Forces (SAF), underscoring that all parties to the conflict are bound by international law to protect civilians. Impunity overshadows progress

Ms. Khan cited the conviction last October of Ali Muhammad Ali Abd-Al-Rahman, known as Ali Kushayb – a former Janjaweed militia leader – as a landmark step toward accountability, but cautioned that the scale of ongoing atrocities far outweighed any sense of progress.

She closed with a pointed call on Sudanese authorities to act against senior suspects long sought by the Court, including former president Omar al-Bashir, former interior minister Ahmad Harun and former defence minister Abdel Raheem Muhammad Hussein.

"Action must now be taken," she said, warning that justice for Darfur's victims would remain hollow without arrests at the highest level.

[\[back to contents\]](#)

Democratic Republic of the Congo

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

Belgian court reopens Patrice Lumumba murder case (Africanews) January 20, 2025

The family of murdered Congolese independence icon Patrice Lumumba said Tuesday they hope to get justice, as a Belgian court weighs prosecuting the sole surviving suspect over the 1961 killing.

Lumumba's relatives have pushed for the past 15 years for what they say is a long-overdue legal reckoning over the complicity of Belgian officials in his murder.

"We cannot turn back time... but we are counting on the Belgian justice system to do its job and shed light on history," Yema Lumumba, 33, a granddaughter of the late Congolese prime minister, told AFP outside a Brussels court, ahead of a closed-door hearing.

Some 65 years after Lumumba was executed and his body dissolved in acid by separatists with the help of mercenaries from former colonial power Belgium, only one ex-official is still alive to face justice.

That is 93-year-old Etienne Davignon, a one-time European commissioner, who was a novice Belgian diplomat at the time of Lumumba's killing.

He is accused by Belgian federal prosecutors of involvement in the "unlawful detention and transfer" of Lumumba, as well as "humiliating and degrading treatment".

Davignon has always denied Belgian authorities' involvement in the murder, and his lawyer declined to comment to AFP before Tuesday's closed-door hearing.

"This is not about revenge, but about a thirst for knowledge," Roland Lumumba, one of Patrice's sons, told AFP by phone from Kinshasa last week.

"Millions of people would like to know the truth."

The killing of Lumumba -- who became prime minister at independence in 1960 -- is one of the many dark chapters in the grim history of Belgian involvement in what became the modern-day Democratic Republic of Congo.

His family says there was a "vast conspiracy" involving Belgian officials to eliminate the Congolese leader.

"Refusing this trial would amount to definitively confirming the impunity for major colonial crimes," said Christophe Marchand, a lawyer for the family.

The Brussels court was due to hear arguments from all parties Tuesday before settling on whether to hold a trial.

Lawyers for Lumumba's family said the hearing also provided the chance to file new civil lawsuits on behalf of about 10 of the former leader's grandchildren.

Six were in court Tuesday, including Yema Lumumba. "Our parents are getting on in years. It's important for us to show that this fight continues, that we are here to ensure it is carried through to the end," she said.

A decision is expected within weeks.

Marchand said he hopes it would then take place in early 2027.

The Belgian probe into potential "war crimes" in the Congo has already led to one macabre discovery: one of Lumumba's teeth, the only known remains of the assassinated leader.

The tooth was seized from the daughter of a deceased Belgian police officer who had been involved in the disappearance of the body.

It was returned to DRC authorities in a coffin during an official ceremony in 2022.

During the handover, then Belgian prime minister Alexander De Croo reiterated the government's "apologies" for its "moral responsibility" in Lumumba's disappearance. De Croo pointed the finger at Belgian officials who at the time "chose not to see" and "not to act".

After entering the diplomatic service in 1959, Davignon rose through the ranks after his early involvement in Congolese independence talks.

In the early 1980s, he gained more prominence when he was named a vice-president in charge of industry of the European Commission.

[\[back to contents\]](#)

EUROPE

The Court of Bosnia and Herzegovina, War Crimes Chamber

Official Court Website [\[English translation\]](#)

Bosnian Serb Serving Genocide Sentence Indicted Again for War Crimes (Balkan Insight) By Azem Kurtic
January 7, 2026

State court confirms war-crimes indictment of Radislav Krstic, a former Bosnian Serb army commander – who is already serving a 35-year jail sentence for his role in the Srebrenica geno

The Bosnian state-level court on Wednesday confirmed the indictment of Radislav Krstic, former Bosnian Serb Army Drina Corps commander, who is serving a 35-year sentence in Estonia for genocide.

The Prosecutor's Office charged him in an indictment raised on December 29 with participating, as commander of the 2nd Romanija Motorised Brigade, in a joint criminal enterprise and an attack on the village of Novoseoci in September 1992, as part of a systematic attack by the Bosnian Serb Army and the Republika Srpska police against the Bosniak population in the Sokolac area.

"After the attack, the women and children were separated from the men, and the captured men were transported by military trucks to a rubbish dump at the Ivan Polje site, where they were shot and killed with firearms," a statement from the Prosecutor's Office said.

During the crime, the Prosecutor's Office said, property was looted and destroyed. The local mosque was demolished and its rubble dumped on the victims' bodies at a local landfill.

"At this location, 44 victims were killed, the youngest of whom was 14 and the oldest 77. The bodies of 43 victims have been exhumed and found, while the remains of one victim are still being searched for," the statement added.

The wartime Drina Corps commander was sentenced by the Hague Tribunal to 35 years in prison for aiding and abetting the genocide in Srebrenica under a final verdict in 2004, and then sent to Britain to serve his sentence.

However, he was returned to The Hague after being attacked in prison in the UK, and then sent to Estonia to serve the rest of his jail time. but has repeatedly been denied early release by the UN court.

Krstic's new indictment has raised questions about how he will be processed considering he is already serving a prison sentence for his role in the Srebrenica genocide of July 1995, when more than 8,000 men and boys were killed. The court did not explain how it plans to proceed.

Retired state court judge Azra Miletic questioned the value of the indictment.

"I don't see how meaningful it is now, when we already have a man sentenced to a long prison term for the most serious crime. I don't know what they didn't know about him before. The Hague must have investigated everything connected to him," Miletic told BIRN.

Krstic has filed several requests for early release in recent year, all of which were denied. At the end of 2024, Krstic admitted his role in the Srebrenica genocide and accepted the court verdict.

Bosnian Court Indicts Four Over War Crimes in Music School (Balkan Insight) By Azem Kurtic
January 15, 2026

Bosnia's top court confirms indictment of four Bosnian Army ex-soldiers for war crimes against Serb and Croat civilians held in the basement of the Music School in Zenica in 1993.

The Court of Bosnia and Herzegovina announced on Thursday that it has confirmed the indictment of four members of the 7th Muslim Brigade of the Army of Bosnia and Herzegovina for war crimes committed against Croat and Serb civilians held in the basement of the Music School in Zenica in 1993.

The indictment charges Nesib Talic, Jusuf Karalic, Nasid Delalic and Sabahudin Sarajlic. According to the indictment, the crimes were committed between January and late March 1993, when fighting was under way between the Croatian Defence Council and the Army of Bosnia and Herzegovina in the Zenica area.

Croat and Serb civilians were unlawfully detained in the Zenica Music School, which served as a makeshift detention facility.

Nesib Talic, who was Assistant Commander for Security of the 7th Muslim Brigade, is accused of "failing to prevent the illegal detention and inhumane treatment of civilians by members of the brigade's military police platoon between January and October 1993", the indictment reads.

Prosecutors say Nesib Talic knew about the abuses, "including beatings that led to the death of one

detainee and the killing of another during an escape attempt, but failed to inform his superiors or take measures to stop the crimes". By his inaction, the indictment claims, he "contributed to unlawful detention, murder and inhumane treatment".

Jusuf Karalic, as commander of the military police platoon, is charged with failing to prevent or punish crimes committed by his subordinates, despite knowing or having reason to know that they were systematically abducting and abusing civilians. His failure to act, prosecutors say, "created the impression that such conduct was allowed".

Nasid Delalic and Sabahudin Sarajlic, members of the same military police unit, are accused of directly participating in the inhumane treatment of detained civilians, inflicting severe physical and psychological suffering.

The charges relate to violations of international humanitarian law and include unlawful detention, inhumane treatment and responsibility for deaths in custody. A BIRN investigation published in January 2023 revealed the names of the alleged perpetrators of crimes in Zenica that were not prosecuted, among whom were the four accused.

[\[back to contents\]](#)

International Criminal Tribunal for the Former Yugoslavia (ICTY)

Official Website of the ICTY

The Last ICTY Case Completed in The Hague (SENSE Center)
January 17, 2026

The former chief of the State Security of Serbia Jovica Stanišić and his senior intelligence officer Franko Simatović were found guilty of participating in a joint criminal enterprise to forcibly and permanently remove the non-Serb population from parts of Bosnia and Herzegovina and Croatia in 1992 - 1995, and were sentenced to 15 years in prison each. This was the last appeal judgment involving core crimes from cases originating before the International Criminal Tribunal for the Former Yugoslavia (ICTY).

The Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (IRMCT), the successor of the ICTY, found Stanišić and Simatović responsible for the crimes committed in Bosanski Šamac, Bijeljina, Zvornik, Doboj, Sanski Most, Trnovo and Dalj in 1992 and 1995 by members of the units that were founded, trained, supported and financed by the Serbia's State Security Service while the two defendants were at its head.

The judgment, delivered on the 30th anniversary of the establishment of the Hague Tribunal, marks the end of its last and longest trial. The ICTY indictment against Stanišić and Simatović was issued in 2003 charging them with persecutions, murders and inhuman acts committed as part of a joint criminal enterprise in parts of Croatia and Bosnia and Herzegovina in the period from 1991 to 1995. The trial began in 2009 and ended in 2013 with the acquittal of both defendants. The Trial Chamber led by Judge Alphons Orie found that crimes were indeed committed against Croats and Muslims in the areas of SAO Krajina and SAO Slavonia, Baranja and Zapadni Srem in Croatia, and in the municipalities of Bijeljina, Bosanski Šamac, Doboj, Sanski Most, Trnovo and Zvornik in BiH, but

rejected the allegations of Stanišić's and Simatović's responsibility.

The prosecution filed an appeal, and two years later the ICTY Appeals Chamber ordered a retrial on all counts of the indictment. The Appeals Chamber judges established serious omissions in the first-instance verdict and decided it would be "inappropriate" for them to give a new assessment of the evidence, since they did not listen to the witnesses and assess the relevance of all the presented evidence, and therefore ordered a retrial.

The new trial of Stanišić and Simatović began in 2017 and ended in 2021 with a judgment by which the former heads of the Serbian State Security were sentenced to 12 years in prison each for crimes committed in Bosnia and Herzegovina. The Trial Chamber rejected the allegations of the participation of Stanišić and Simatović in a joint criminal enterprise. They were found not guilty of crimes committed in the areas of the so-called SAO Krajina and SAO Baranja, Slavonia and Zapadni Srem in Croatia, and in the municipalities of Bijeljina, Zvornik, Sanski Most, Doboj and Trnovo in Bosnia and Herzegovina. Still, it was the first and only judgment of the ICTY that convicted Serbian state officials.

Both sides appealed and the hearing was held in January 2023. On May 31 the Appeals Chamber delivered a judgment dismissing the grounds of appeal of Stanišić and Simatović and partially accepting the prosecution's appeal in the part that refers to the joint criminal enterprise. The former head of the State Security of Serbia Jovica Stanišić and his deputy and commander of the Special Operations Unit Franko Simatović were thus found guilty of participating in a joint criminal enterprise and of being responsible for the crimes committed by various Serbian forces in 1992 in BiH - in Bijeljina, Zvornik, Bosanski Samac, Doboj and Sanski Most, and in 1995 in Trnovo and Sanski Most. They were also found responsible for the murder committed in Daljska Planina in Croatia in June 1992.

[\[back to contents\]](#)

Kosovo Specialist Chambers

Trial of former KLA leaders, Kosovo Specialist Chambers in The Hague announce when the closing statement will be held! (Vox)
January 15, 2026

Closing statements in the case against former Kosovo Liberation Army leaders will be held from February 9 to 18, the Kosovo Specialist Chambers based in The Hague announced.

Former KLA superiors Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi are accused of war crimes and crimes against humanity.

"I'll burn them with gasoline, I won't let them go"/ The appeal released the 3 murder suspects, Martin Çeço's father: I don't want life anymore, I'll kill them and myself! The four have pleaded not guilty to the charges against them.

According to the announcement, it is expected that the Specialized Prosecutor's Office will initially deliver its closing statement on February 9. The following day, it will be the turn of the victims' advocate.

On February 11, the closing statement is scheduled to be made by the defense team of former Kosovo President Hashim Thaçi.

On February 12, the defense of former Speaker of Parliament Kadri Veseli will be next, while the day after that of former MP Rexhep Selimi and former Speaker of Parliament Jakup Krasniqi.

On February 16, Krasniqi's defense team is expected to continue its closing arguments, followed by time for possible questions from the panel. Two days later, on February 18, according to an agenda that

the Specialist Chambers said could change, there will be answers from the parties and statements from the accused.

Before the closing statements, the parties will submit final files by January 30.

After that, the panel has three months to reach a decision and announce it. As the Court in The Hague has previously said, the panel can request an extension of the deadline for reaching a decision for another two months, and in exceptional cases, even longer.

Thaçi, Veseli, Krasniqi, and Selimi have been in detention since November 2020. Their trial began in April 2023. Initially, the Specialized Prosecutor's Office called 125 witnesses to the courtroom, while 117 others submitted their written testimonies.

In September of this year, the defense of Thaçi and Krasniqi presented witnesses, while Veseli and Selimi did not present defense evidence.

Among the witnesses for Thaçi's defense who appeared in The Hague were mostly senior Western officials with direct knowledge of the events. They included former US Assistant Secretary of State James Rubin and retired US General Welsley Clark, who led the NATO air campaign against Serbian military targets in 1999.

Meanwhile, Thaçi is facing another case for obstruction of justice, and the trial in this matter is scheduled to begin on February 24 of this year.

The indictment charges the defendants with "personal" responsibility, but also for "crimes committed by their subordinates."

According to the indictment, Thaçi, Veseli, Selimi and Krasniqi are accused of crimes against humanity and war crimes, including the murder of more than 100 victims as well as the unlawful detention and torture of hundreds of victims.

The indictment states that the four defendants and other KLA members were part of a "joint criminal enterprise" and "shared the common goal of seizing and exercising control throughout Kosovo by all means, including intimidation, mistreatment, the use of violence and the elimination of those they considered opponents."

The Specialist Chambers and the Specialist Prosecutor's Office – widely known as the Specialist Court – were established in 2015 by the Kosovo Assembly and are part of the Kosovo judicial system, but operate with international staff in the Netherlands.

The Special Court investigates alleged crimes committed by KLA members against ethnic minorities and political rivals from January 1998 to December 2000./REL

[\[back to contents\]](#)

Council of Europe's Special Tribunal for the Crime of Aggression Against Ukraine

Russia's war against Ukraine: the fight against impunity (Council of the EU and the European Council)

January 8, 2026

The EU has taken a number of measures to support the prosecution of Russia's international crimes committed in and against Ukraine and to ensure that Ukraine and its people receive war reparations.

Holding Russia accountable

Since the start of Russia's war of aggression against Ukraine, numerous credible reports have documented the commission of core international crimes and atrocity crimes in Ukraine – crimes that continue to this day.

Core international crimes and atrocity crimes constitute the most serious violations of international law. They include crimes against humanity, war crimes, genocide and crimes of aggression.

The EU and its member states are strongly committed to ensuring that all these grave atrocities committed by Russia in and against Ukraine do not go unpunished.

War crimes committed in Ukraine

To support the prosecution of Russia's war crimes and crimes against humanity, the EU has taken a number of measures, including referring Russia to the International Criminal Court in March 2022 and setting up:

- a joint investigation team within Eurojust (March 2022) - the collection of war crimes data within Europol (March 2022) - the EU advisory mission in Ukraine (April 2022) - a crimes evidence database at Eurojust (February 2023) - a taskforce within Europol to help identify suspects (September 2023)

International Criminal Court

In March 2022, all of the EU member states, together with other partner countries, decided to collectively refer the situation in Ukraine to the International Criminal Court (ICC). In addition to the investigation by the ICC prosecutor, the Prosecutor General of Ukraine has also opened an investigation, as have the authorities of several member states.

Eurojust

In March 2022, the European Union Agency for Criminal Justice Cooperation (Eurojust) supported the establishment of a joint investigation team on alleged crimes committed in Ukraine. The investigation team seeks to enhance judicial cooperation between the competent authorities involved in the investigation and prosecution of core international crimes at national and international level.

It is currently comprised of the judicial authorities of Ukraine, Estonia, Latvia, Lithuania, Poland Romania and Slovakia. Eurojust, Europol and the ICC also participate in the work of the investigation team.

To support the investigation and prosecution of core international crimes committed in Ukraine, in May 2022, the Council adopted new rules making Eurojust a central hub for the collection, analysis and sharing of evidence. Under this new framework, Eurojust can:

store and preserve evidence related to war crimes, including satellite images, photographs, videos, audio recordings, DNA profiles and fingerprints process and analyse this evidence and share it with the relevant national and international authorities

In this context, Eurojust set up the core international crimes evidence database in February 2023. This tailor-made tool enables Eurojust to support national judicial authorities in identifying parallel investigations and in coordinating evidence of core international crimes that may be crucial to their investigations.

Europol

The European Union Agency for Law Enforcement Cooperation (Europol) began collecting relevant war crimes data from various sources (law enforcement, NGOs and open sources) in March 2022 to support investigations into and prosecutions of atrocities committed in Ukraine.

The agency also supported the launch of a taskforce in September 2023 to help identify suspects and their involvement in core international crimes and atrocity crimes committed in Ukraine through

the collection and analysis of open-source intelligence.

EU advisory mission in Ukraine

In April 2022, the Council amended the mandate of the EU advisory mission in Ukraine (EUAM Ukraine) to allow it to support accountability efforts. EUAM Ukraine now provides strategic advice and training to Ukrainian authorities on the investigation and prosecution of international crimes.

EUAM Ukraine also donates funds and equipment to Ukrainian authorities to facilitate their efforts. The mission coordinates with the ICC and Eurojust, as well as with member states acting in direct support of the investigation and prosecution of international crimes.

Crime of aggression against Ukraine

To support the prosecution of Russia's crime of aggression, the EU has endorsed the establishment of the Special Tribunal for the Crime of Aggression against Ukraine and launched the International Centre for the Prosecution of the Crime of Aggression in Ukraine.

Special Tribunal for the Crime of Aggression against Ukraine A crime of aggression is a crime committed by a country's political and military leadership against another country's sovereignty, territorial integrity or political independence.

Crimes of aggression include invasion, military occupation, annexation by the use of force, bombardment and blockade of ports. As Russia is not a state party to the Rome Statute of the ICC, the Court does not have jurisdiction over its crime of aggression against Ukraine.

For this reason, on 9 May 2025, the EU, the Council of Europe, Ukraine and an international coalition of states endorsed the establishment of the Special Tribunal for the Crime of Aggression against Ukraine.

Once set up within the Council of Europe, the tribunal will have the power to investigate, prosecute and try Russian political and military leaders responsible for the crime of aggression against Ukraine.

International Centre for the Prosecution of the Crime of Aggression in Ukraine

Eurojust hosts the International Centre for the Prosecution of the Crime of Aggression in Ukraine, which was established in July 2023.

The centre aims to support and coordinate national investigations into the crime of aggression related to the war in Ukraine and facilitate case-building for any future trials, including those before the Special Tribunal for the Crime of Aggression against Ukraine.

Paying for the damage done

The EU is committed to ensuring that Ukraine and its people receive full reparations for the damage caused by Russia's war of aggression. To this end, the EU has joined the Register of Damage for Ukraine and signed the Convention establishing the International Claims Commission for Ukraine.

Register of Damage for Ukraine

The Register of Damage for Ukraine, established in May 2023 within the Council of Europe, records eligible claims for compensation for damage, loss or injury resulting from Russia's war of aggression against Ukraine. The register opened to applications in April 2024.

The European Union and 44 states have joined the register.

International Claims Commission for Ukraine

On 16 December 2025, the EU, along with 35 countries, signed the Convention establishing the International Claims Commission for Ukraine.

Upon ratification of the Convention by the parties, the Claims Commission will be set up, within the

framework of the Council of Europe, to review, assess and decide on eligible claims and determine the amount of compensation due for damage, loss or injury caused by internationally wrongful acts committed by Russia in or against Ukraine.

[\[back to contents\]](#)

MIDDLE-EAST

Syria

Syrian refugee on trial in Germany over Islamic State killings (Yahoo News)

January 08, 2026

A 34-year-old Syrian accused of membership of Islamic State appeared in a German court on Thursday where he faces a slew of charges including terrorism, war crimes and crimes against humanity.

At the start of the trial at the Dusseldorf higher regional court, prosecutors said the man, who came to Germany as a refugee, was involved in a massacre against members of a rebel tribe in Syria in August 2014.

He is accused of having led Islamic State fighters to the tribe who then rounded up its members in a school yard, separating men and women.

They then abused the men and decapitated two of them, while the defendant secured the scene armed with a Kalashnikov, making him an accessory to torture and murder, according to prosecutors.

Defence Attorney Mutlu Günal rejected the accusations, claiming that his client was being incriminated by a "malicious cousin."

Allegations raised by the prosecution's main witness, whom Günal identified as the defendant's cousin, that Islamic State had beheaded his brother and burned his father after the defendant led the way to them, were the result of a family feud smouldering for decades, according to the lawyer.

The cousin, who also lives in Germany, even temporarily returned to Syria to threaten his client's family, the attorney said on the sidelines of the proceedings.

At the start of the trial, the court read out excerpts of a list obtained by the US that contains the names of more than 1,000 Islamic State fighters.

One person listed with a photo, whose nom de guerre is given as Abu Aboud, is "highly likely" the defendant, an investigator from Germany's federal criminal police BKA noted.

Investigators also found short video clips showing heavily armed fighters on a tablet retrieved at the defendant's room in a refugee accommodation in Monheim, near Dusseldorf.

One of the images was said to show human skulls riddled with holes, while one of the videos shows a person being whipped.

The defendant has been held in pre-trial detention since his arrested on January 20, 2025. The

court has scheduled 18 sessions until the end of March.

[\[back to contents\]](#)

ASIA

War Crimes Investigation in Myanmar

UN World Court begins landmark hearings on Rohingya genocide case against Myanmar (UN News) By Vibhu Mishra
January 12, 2026

Public hearings opened on Monday at the International Court of Justice (ICJ) in a landmark case brought by the Gambia against Myanmar, alleging violations of the Genocide Convention over the military's treatment of the Rohingya minority.

The proceedings, held at the Peace Palace in The Hague, mark the start of the merits phase in the case, after years of preliminary legal arguments.

Over the next three weeks, ICJ judges will hear oral arguments from both sides, examine witnesses and experts, and consider whether Myanmar breached its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, to which the country is a party.

Opening the hearings, Judge Iwasawa Yuji, President of the Court, outlined a detailed schedule that includes two rounds of pleadings by Gambia and Myanmar, as well as closed sessions to hear testimony from witnesses called by both Parties.

Speaking on behalf of Gambia, Attorney General and Minister of Justice Dawda Jallow told the court that his country brought the case "after reviewing credible reports of the most brutal and vicious violations imaginable" committed against the Rohingya, a Muslim minority in Myanmar's Rakhine province.

"By all measures, this case is not about esoteric issues of international law," Mr. Jallow said. "It is about real people, real stories, and a real group of human beings."

A case years in the making

Gambia filed its application in November 2019, accusing Myanmar of breaching the Genocide Convention through acts allegedly committed during so-called "clearance operations" carried out by the Myanmar military, or Tatmadaw.

Those operations escalated sharply in 2017, prompting more than 700,000 Rohingya to flee to neighbouring Bangladesh amid widespread killings, sexual violence, village burnings and other abuses. Zeid Ra'ad al-Hussein, the then UN High Commissioner for Human Rights, described the situation as a "textbook example of ethnic cleansing."

A UN Human Rights Council-mandated fact-finding mission said in 2018 that it had reasonable grounds to conclude that serious crimes under international law, including genocide, crimes against humanity and war crimes, had been committed.

Nearly one million Rohingya remain living as refugees in camps in Bangladesh, while countless others are displaced or trapped inside Myanmar in dire conditions.

Provisional measures

In January 2020, the Court unanimously ordered provisional measures, directing Myanmar to take all steps within its power to prevent genocidal acts against the Rohingya, preserve evidence, and report regularly to the Court on its compliance.

Myanmar challenged the Court's jurisdiction, but in July 2022 the judges ruled that they were competent to hear the case.

Eleven States also made written submissions in support of Gambia's interpretation of the Genocide Convention.

Accountability and broader context

Addressing the judges, Mr. Jallow said Myanmar remained trapped in "a cycle of atrocities and impunity," noting that no one had been held accountable for crimes against the Rohingya. He also pointed to the February 2021 military coup, which overthrew the civilian government and plunged Myanmar into renewed nationwide conflict.

"Accountability is imperative," he said, warning that impunity risks the repetition of atrocity crimes.

Myanmar's arguments

Myanmar is expected to begin presenting its arguments later this week. The Court's final judgment, which could take months or longer after the hearings conclude, will be legally binding.

The International Court of Justice is the United Nations' principal judicial organ. It settles legal disputes between States and gives advisory opinions on questions of international law. Unlike criminal courts, it does not try individuals but determines State responsibility.

[\[back to contents\]](#)

Myanmar tells World Court Gambia has not proven Rohingya genocide case (Reuters) By Stephanie van den Berg
January 16, 2026

Myanmar told the United Nations' top court on Friday that Gambia had not proven its accusation that the Myanmar government had committed genocide against the minority Muslim Rohingya, part of a hearing on the landmark case. Gambia, which is predominantly Muslim, brought the case before the International Court of Justice in 2019. The West African country told the court on Monday that Myanmar's authorities had targeted the Rohingya for destruction, allegations Myanmar rejected.

"Gambia has failed to meet its burden of proof. This case will be decided on proven fact not unsubstantiated allegations," Ko Ko Hlaing, a representative of the Myanmar government, told the ICJ, which is also known as the World Court.

Myanmar's armed forces launched an offensive in 2017 that forced at least 730,000 Rohingya from their homes and into neighbouring Bangladesh, where they recounted killings, mass rape and arson. A U.N. fact-finding mission concluded the 2017 military offensive had included "genocidal acts".

Myanmar has denied genocide and Ko Ko Hlaing told judges the offensive was a legitimate counter-terrorism campaign in response to attacks by Muslim militants. He added the U.N. fact-finding mission was not objective or reliable.

Lawyers for Gambia had argued that it would be unreasonable for judges to conclude that

Myanmar's attack on thousands of Rohingya civilians, including women, children and the elderly, as well as burning their villages was done just to combat terrorism.

They said the pattern of conduct during the crackdown indicated the genocidal intent legally needed to determine genocide was committed.

Ko Ko Hlaing stressed that his government was committed to returning and resettling Rohingya refugees from the camps in Bangladesh but said those efforts were thwarted by elements beyond its control like the Covid-19 pandemic, a cyclone and political instability. "Myanmar's commitment and constant efforts since 2017 contradict Gambia's narrative that Myanmar's intention is to destroy or forcibly deport this population," he said.

The ICJ is the U.N.'s highest court and deals with disputes between states.

Gambia's case, backed by the 57-nation Organisation of Islamic Cooperation, is the first genocide case the ICJ is hearing in full in more than a decade. A final ruling is expected towards the end of 2026.

The outcome will have repercussions beyond Myanmar, likely affecting South Africa's 2023 genocide case at the ICJ against Israel over the war in Gaza. Israel also denies genocide and lawyers for Israel dismissed South Africa's case as an abuse of the genocide convention. Myanmar has been in further turmoil since 2021, when the military toppled the elected civilian government and violently suppressed pro-democracy protests, sparking a nationwide armed rebellion.

The country is currently holding phased elections that have been criticised by the United Nations, some Western countries and human rights groups as not free or fair. The military says the vote has public backing and is being conducted without coercion.

The hearings span three weeks and from next Wednesday the court will hear Rohingya victims of the alleged atrocities in closed sessions. That will mark the first time Rohingya victims will be directly heard by an international court.

[\[back to contents\]](#)

AMERICAS

Venezuela

Venezuela: UN Fact-Finding Mission expresses grave concern following US military intervention and calls for accountability for human rights violations and crimes (United Nations Human Rights Office of the High Commissioner) January 3, 2026

The Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela expressed grave concern over the human rights situation in Venezuela following the US attack and capture of Nicolás Maduro and underscored the need to ensure accountability for the grave human rights violations and crimes against humanity committed by his government.

“In light of the US military intervention and the apprehension of Nicolás Maduro on – according to the US administration - charges of ‘narco-terrorism against the United States and its citizens,’ the Fact-Finding Mission underscores the need to maintain the focus on the grave human rights violations and crimes against humanity which have been committed against the Venezuelan population,” said Marta Valiñas, Chair of the Fact-Finding Mission.

These violations, documented extensively by the Fact-Finding Mission, include extrajudicial killings and other arbitrary deprivations of life; arbitrary detentions; enforced disappearances (mostly short-term); torture and other cruel, inhuman, or degrading treatment; and sexual and gender-based violence.

“The Maduro government’s longstanding record of grave human rights violations does not justify a US military intervention that breaches international law,” said Alex Neve, expert member of the Fact-Finding Mission. “Similarly, the illegality of the US attack does not in any way diminish the clear responsibility of Venezuelan officials, including Mr. Maduro, for years of repression and violence amounting to crimes against humanity. The Venezuelan people require and deserve solutions that fully comply with international law.”

“Responsibility for these violations is not limited to Nicolás Maduro,” said Maria Eloisa Quintero, expert member of the Fact-Finding Mission. “Other individuals who exercised command or authority over security forces, or who otherwise contributed to these crimes, must also be held accountable.”

The Fact-Finding Mission is deeply concerned about the risk of further serious human rights violations in the coming days and weeks amid heightened volatility, including the US government’s assertion that it intends to “run” the country for the foreseeable future at the same time that Venezuelan authorities have declared a state of emergency.

The Mission is closely monitoring the rapidly evolving situation in the country and its impact on the rights, safety, and security of the population. It calls on Venezuelan and U.S. authorities, as well as the international community, to ensure full respect for international law. The rights of the Venezuelan people have been systematically violated for far too long. Human rights must, without exception, come first.

[back to contents](#)

TOPICS

Commentary and Perspectives

The ICC’s Residual Jurisdiction & the Situation in the Philippines (EJIL: Talk) By Gemmo Bautista Fernandez
January 20, 2026

Background On 23 October 2025, the International Criminal Court’s (‘ICC’) Pre-Trial Chamber I (‘PTC’) dismissed Duterte’s challenge to the Court’s jurisdiction. Duterte, to recall, was arrested in March 2025 on allegations of crimes against humanity in the context of the Philippine government’s anti-narcotics campaign. Seemingly, Duterte’s case presents a novel

issue for the ICC. During his presidency, Duterte withdrew the Philippines from the Rome Statute ('Statute') in March 2018, a month after the Office of the Prosecutor ('OTP') opened a preliminary examination into crimes that may have been committed during Duterte's so-called 'Drug War'. Yet, it was only in May 2021, twenty-six months after the Philippines' withdrawal became effective, that the OTP requested from the PTC an authorisation for a full investigation. In September 2021, the PTC granted this request.

This sequence of events is crucial to Duterte's jurisdictional challenge. Duterte, in his jurisdictional challenge, claims that the Court has no jurisdiction over his case as the Philippines was no longer a party to the Statute when the PTC authorised the OTP's full investigation into the situation in the Philippines. Moreover, he claims that Article 127(2) of the Statute, which allows the Court to retain jurisdiction over matters already under its consideration after the effectivity of a state's withdrawal, is not applicable to his case. Nevertheless, the PTC rejected both claims and the matter is now pending before the Appeals Chamber ('AC'). This essay submits that the PTC correctly dismissed Duterte's challenge and supports the Court's exercise of jurisdiction over the situation in the Philippines.

Preconditions for & Exercise of Jurisdiction

Duterte, following Judges Perrin de Brichambaut and Lordkipanidze's dissenting opinion in the PTC's decision on the OTP's request for authorisation under Article 18(2), asserts that a holistic reading of the Statute reveals that the preconditions under Article 12(2)—the state of nationality or the territorial state is a party to the Statute—must be extant when the Court exercises jurisdiction based on the OTP's initiation under Article 13(c). This 'exercise of jurisdiction', Duterte claims, occurs when the PTC authorises a full investigation under Article 15(4). For this reason, Duterte argues that the Court cannot exercise jurisdiction over his case as the Philippines withdrawal had already been effective when time the PTC authorised the OTP's full investigation.

However, contrary to Duterte's claim, the PTC's authorisation is not the point at which the Court exercises jurisdiction. Article 13(c) does not state that the Court exercises jurisdiction when the PTC authorises the OTP's request for a full investigation. Instead, it provides that the 'Court may exercise its jurisdiction' if the OTP 'has initiated an investigation [...] in accordance with Article 15'. Here, it is important to note that under Article 15(6), the 'investigation' that the OTP initiates is actually a 'preliminary examination'. This preliminary examination, as Bergsmo, Pejic, and Zhu point out, and not the PTC's authorisation for a full investigation, is the 'trigger mechanism' for the Court's exercise of its jurisdiction. Cassese, Gaeta, and Jones appear to share this view, as does the OTP. Under Article 15, the PTC's role, as Schabas observes, is to provide an 'additional safeguard' to the OTP's discretion to investigate. Only when the PTC has approved the OTP's request may the latter begin a full investigation. That said, this does not detract from the fact that the Court already exercises jurisdiction when the OTP initiates a preliminary examination. In the Philippines' case, it was still a party to the Statute when the OTP opened its preliminary examination.

Effect of Withdrawals under the Rome Statute

Crucially, the operation of the articles on the precondition for and the exercise of the Court's jurisdiction is still subject to Article 127. This provision, according to the PTC, is a 'lex specialis [...] regime that appl[ies] to the exceptional circumstance of a state's [withdrawal] from the Statute'. Under Article 127(2), a party's withdrawal 'shall [not] prejudice in any way the continued consideration of any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective'. In effect, the provision 'balances [a state's] right [...] to withdraw from the Statute with the overall objective of [...] putting an end to impunity'. Ordinarily, a withdrawing state would 'no longer bound by the Statute's jurisdictional provisions'. However, if the 'matter concerned was already under the [Court's consideration before] the [state's] withdrawal [...] [became] effective', then the Court would retain its jurisdiction.

Like Heller and Jacobs, Duterte argues that the phrase 'any matter under consideration' does not cover the OTP's preliminary examination as it is not 'a formal procedural phase' but 'internal, informal, and non-justiciable'. Furthermore, Duterte asserts that the term 'Court' in Article 127 only

‘refers to the judicial organ of the [ICC] to the exclusion of the [OTP]’. Accordingly, Duterte submits that Article 127 does not apply to the situation in the Philippines as the ‘matter’ under consideration when the Philippines’ withdrawal became effective was only a preliminary examination by the OTP. That said, these claims, as Whiting and Janssens submit, and in line with the views of scholars like Slade, Clark, Pellet, and Schabas, may not be entirely accurate.

First, the phrase ‘any matter’ is arguably broad enough to cover preliminary examinations. As the PTC observes, these are ‘broad general terms’ that do not refer to a ‘specific stage of proceedings’. Had ‘any such specific limitation been intended, the provision would instead have used a word such as “trial” or “investigation” so as to narrow its application to a particular procedural stage’. The change in the wording between the Draft Statute and the Statute also supports this interpretation. While the Draft Statute referred to ‘proceedings already commenced’, a phrase that is narrower, Article 127 as adopted speaks of ‘any matter which was already under consideration’.

Furthermore, preliminary examinations, while less formal, are more than Duterte purports them to be. A preliminary examination is not merely a perfunctory activity. As the PTC points out, it is ‘a statutory process and a necessary precondition to seeking authorisation for [...] a [full] investigation’. Indeed, in its Commentary to the Draft Statute, the ILC characterised preliminary examinations as a ‘flexible structure’ that ‘does not involve undue expense or the proliferation of offices’. They are an integral part of the process with their ‘own guarantees of independence of the prosecution process and of the rights of the [potential] accused’ to ensure that ‘complaints [are] not be brought before the Court’ without sufficient basis. For this reason, Article 15 allows the OTP to ‘seek additional information’ from states, UN organs, and international organisations and ‘may receive [...] testimon[ies] at the seat of the Court’. In addition, contrary to Heller and Jacobs’ claim, it is not the case that any mere assessment of information constitutes a preliminary examination. The OTP emphasises the unique conditions that allow for its work to proceed independently, impartially, and objectively. With regard to the situation in the Philippines, while the OTP has, since 2016, received communications and reports documenting alleged crimes, it was only in 2018, after ‘careful, independent, and impartial review’ that it decided to open a preliminary examination.

Second, there appears to be no reason why the term ‘Court’ in Article 127 should not include the OTP. As Hall, Nsereko, and Ventura observe, the Statute uses the term in its broad and narrow senses. According to the PTC, whether the term ‘Court’ refers to ‘the Chambers of the Court, the [OTP], or both’ depends ‘upon the context of the provision’. Duterte may be correct in noting that the Statute, at times, distinguishes between the ‘Court’ and the OTP to signal that these are two different organs. Moreover, there are provisions where the term ‘Court’ clearly refers to the ‘judges’. Yet, there are obvious reasons for these. In the former, the provision delineates the organs’ respective functions (see e.g. Articles 15, 18, 19, 67, 68). In the latter, the function is necessarily ‘judicial’ which the OTP cannot perform (see e.g. Articles 17, 18, 20, 23, 58(4), 72, 73, 87, 89, 90, 99, 100, 103, 109, 110).

That said, it may be incorrect to construe the term ‘Court’ to mean ‘judges’ where the Statute does not make this distinction as in Article 127. As the PTC notes, the term in ‘its ordinary meaning is better defined by reference to the [...] the specific institution of the [ICC]’. This is a point made clear by Article 1 which ‘designates the [entire ICC] as “the Court”’. The ILC also emphasises this in its Commentary to the Draft Statute stating that ‘the term “Court” [...] refers to the [ICC] as a whole [unless] specific functions are intended to be exercised by particular organs’. For its part, the Trial Chamber (‘TC’) in *Kenyatta* also construed the term ‘Court’ in the expansive sense where the Statute does not suggest otherwise. In interpreting the term ‘Court’ in Article 93(1), it notes that a ‘restrictive interpretation’ would be ‘inconsistent with the [...] division of mandates [among] the different organs of the Court [and its] efficient and effective functioning’.

Supplementary Application of VCLT Article 70

Finally, the Statute’s Article 127, as the PTC observes, is also ‘consistent with the general framework provided for by Article 70 of the [Vienna Convention on the Law of Treaties (‘VCLT’)] which addresses the consequences of the termination of a treaty’. VCLT 70(1)(b) provides that, unless otherwise provided, a treaty’s termination ‘does not affect any [party’s] right, [duty], or legal [...] created through the [treaty’s] execution [...] [before] its termination’. Contrary to Duterte’s assertion, the grant of jurisdiction to the Court over offences committed in the Philippines or by its nationals is ‘legal situation’ that arose due to the Philippines’ ratification of the Statute. After all, the

Philippines' ratification permitted the Court to exercise jurisdiction over the situation on the Philippines and triggered the operation of Article 127. This means, according to Pellet and Clark, that matters under consideration by the Court before the effectivity of the state's withdrawal 'can continue its course thereafter'. In the alternative, it may be argued that the parties' duties under the Statute are, in Fitzmaurice's classification of obligations, 'absolute'. That is, parties pledge to others to cooperate with the Court's proceedings. These duties, according to Article 70, survive the Philippines' withdrawal from the Statute.

Summary

All things considered, a better reading of the Statute suggests that the Court may continue to exercise jurisdiction in the situation in the Philippines. The Philippines was still a party to the Statute when the OTP opened its preliminary examination—the point when the Court exercises its jurisdiction. Furthermore, under the Statute's Article 127, the Philippines' withdrawal did not deprive the Court of its jurisdiction. In this regard, the phrase 'any matter' is arguably broad enough to cover preliminary examination. Similarly, there appears to be no reason why the term 'Court' in Article 127 should not include the OTP. Finally, under VCLT's Article 70, any 'legal situation' that arose while the Philippines was a party to the Statute are not affected by its withdrawal. Accordingly, the AC would be correct in affirming the PTC's decision which would put to rest any remaining doubts on the Court's jurisdiction over the situation in the Philippines.

Judging War: The Legitimacy of International Courts in Armed Conflicts (Just Security) By Nienke Grossman
January 21, 2026

There is nothing quite like watching two States fight it out in the International Court of Justice (ICJ) at the Peace Palace, rather than on the battlefield. Arising from the ashes of World War II, the ICJ was created to serve as the "principal judicial organ" of the United Nations, which was itself founded to "save succeeding generations from the scourge of war" and "to establish conditions under which justice and respect for [international law] can be maintained..." (see the United Nations Charter preamble and Article 92). The entire U.N. project was premised on moving away from organized violence toward maintenance of peace and security through international cooperation and law.

Yet what role exactly can, or should, international courts like the ICJ and the International Criminal Court (ICC), among others, play in ongoing armed conflicts? What can we realistically expect from international courts? To what extent can they be useful for limiting the intensity or length of such conflicts, and when can they be counterproductive to furthering the cause of peace?

Why Legitimacy Matters

We could analyze these and many other important questions about international courts in ongoing conflicts from multiple theoretical and practical perspectives, as well as at various phases in a conflict. We could consider when and how courts' actions in ongoing conflicts strengthen their legitimacy or effectiveness, or preserve and promote justice, human rights, and the rule of law. We could also assess the role played by courts in preventing conflicts when they clarify applicable legal norms before hostilities break out or after they are concluded.

International courts can, and often do, play a valuable and important role in ongoing conflicts. They can provide a forum for peaceful dispute resolution rooted in shared norms, and for seeking truth, protecting human rights, and achieving accountability. They can help to reaffirm and to realize our fundamental commitments to order, justice, and peace, rather than brute force, impunity, and lawlessness. Yet, like many other international institutions, international courts remain works-in-progress, with strengths, weaknesses, flaws, and unmet potential. In some circumstances they stand on shaky ground with respect to their legitimacy. Their legitimacy or, "justified authority," is essential because only legitimate courts have the "right to rule," as Dan Bodansky and others have written. In other words, only legitimate courts' decisions deserve respect and demand compliance. By contrast, when international courts lack or are perceived to lack justified authority, States and

others may or will disregard their rulings – because they should or because they believe they should.

Understanding when and why international courts face challenges to their legitimacy is, therefore, imperative for protecting their role and potential to create a more just and peaceful world. Looking at courts through a legitimacy lens allows for reflection on when these challenges have merit and what reforms might address them. If international courts are to meet their potential, we must be willing to ask ourselves in what ways and in which circumstances they lack justified authority and when perceptions of illegitimacy are groundless or justified. Further, if international courts lose legitimacy in one pivotal context – in relation to ongoing armed conflicts – that loss of legitimacy may undermine perceptions of international courts' abilities to adjudicate other types of disputes, as well as the utility of law and courts as problem-solving tools altogether. States may choose to criticize, undermine, and exit, rather than to seek ways to improve existing institutions and law. In other words, the rule of law more broadly is at greater risk when courts are illegitimate or believed to be so.

What Drives Legitimacy?

Legitimacy is often described as either “normative” or “sociological.” Whether an institution is normatively legitimate often turns on the application of supposedly objective legal, philosophical, political, and other standards. These might include justice, effectiveness, and democratic values among others. For example, Joseph Raz suggests (at page 53) that an institution is legitimate only when it helps those normatively addressed better to comply with rules that bind it independently. In other words, if a human rights court does not help States to comply with their human rights obligations better than they would on their own, then the court is not legitimate. Yuval Shany has argued that legitimacy and effectiveness are deeply intertwined. A court that achieves the goals of its mandate providers is more likely to be legitimate.

Sociological legitimacy, on the other hand, involves perceptions of justified authority. Whether a court is perceived to have the right to rule depends on who is making the assessment, and assessments may change over time. For example, while some international actors may perceive a court's legitimacy to be enhanced when it issues a sweeping decision on an important issue of the day, others may find that such decision exceeds the scope of authority delegated to the court by those who created it, thereby undermining its legitimacy.

In addition, Joost Pauwelyn and Joseph Weiler (at page 193) usefully distinguish between internal and external legitimacy. While internal legitimacy focuses on how those working within the institutional regime of the court perceive legitimacy, external legitimacy is concerned with the views of constituencies outside the institution. Legitimacy, whether normative or sociological, can also be split into source, process, and results oriented factors, as Rudiger Wolfrum has done (at page 6). Consent to be bound is a source oriented factor, while process deals with fair and unbiased procedures. Results factors are concerned with the extent to which the court performs its functions.

Legitimacy, International Courts, and Ongoing Armed Conflicts

The resort to international courts during ongoing armed conflicts, undoubtedly the most politically loaded and sensitive situations that States and their leaders face, can present several threats to legitimacy. This post highlights two instances when the ICJ and the ICC should be particularly attuned to the potential legitimacy impacts of their decisions: when the ICJ's jurisdiction rests on precarious grounds and when the ICC Prosecutor exercises discretion in applying the complementarity standard.

Fragile Jurisdiction at the ICJ

Although some disputes brought before the ICJ fall indisputably within its jurisdiction *ratione materiae*, or subject matter jurisdiction – such as if both States have accepted the compulsory jurisdiction of the Court with no limitations – others rest on more fragile grounds. The Court's normative legitimacy is at risk when States have not consented to the Court's jurisdiction or when the Court acts beyond the scope of jurisdiction granted to it by States. Sociological legitimacy is threatened when States perceive the Court to be trespassing the bounds of its jurisdiction, or when they believe that the Court is exceeding the scope of jurisdiction they have granted to it. In short, the Court's source legitimacy, which is rooted in State consent as the source of the Court's authority, is

called into question.

This legitimacy challenge can arise, for example, when the ICJ's jurisdiction is rooted in a compromissory clause. Article 36 of the ICJ statute establishes the bases for the Court's contentious jurisdiction, including those grounded in a treaty provision. Most States have not accepted the Court's compulsory jurisdiction without limitations, so advocates look for compromissory clauses in treaties as a jurisdictional hook. Applicant States have tried to fit what amounts to a large square peg into a small round hole. ICJ judges James Crawford, Rosalyn Higgins, and Sir Robert Jennings raised (at page 280-282) such concerns in dissenting and separate opinions in at least three cases, as identified by Callista Harris. As one illustrative example, Judge Crawford questioned whether the *Georgia v. Russian Federation* case "really concerned racial discrimination... or whether Article 22 was being used as a device to bring a wider set of issues before the Court" (para. 18).

The Court, hopefully, makes its decisions ultimately based on what it considers to be relevant and applicable facts and law in cases involving compromissory clause jurisdiction. But no meaningful mechanism exists to screen out material irrelevant to the legal question at hand during the oral hearings or in written pleadings or materials presented to the Court. The Applicant may make arguments and present evidence aimed at constituencies far beyond the courthouse doors, transcending or trespassing the court's limited jurisdiction and involving facts and law that a Respondent State has not consented to being considered or applied in a particular dispute. In other words, advocates may use the Court primarily as a means for achieving broader political aims, rather than to interpret and apply a particular treaty's provisions to a set of facts, as permitted by its compromissory clause jurisdiction. Doing so can threaten both the court's justified authority and perceptions of it.

Of course, States' choices to litigate in the ICJ are undoubtedly political and often aimed at satisfying or influencing domestic and international opinion. And using legal proceedings (at page 8) to achieve political or even kinetic battlefield goals is not a new phenomenon. Perhaps trying to divorce politics from law in international courts is a fool's errand. But if courts are seen primarily or exclusively as political fora, questioning their legitimacy becomes much easier. States consented to the creation of the ICJ as a forum for resolving disputes based on applying relevant law to relevant facts, and they carefully tailor their consent to the Court's jurisdiction with these premises in mind. For better or worse, States have never agreed to automatic jurisdiction. When the Court appears to be, or is in fact utilized for, airing political grievances or advancing foreign policy agendas that transcend the scope of States' consent to jurisdiction, the Court's source legitimacy is diminished.

Fragile jurisdiction can also imperil the Court's legitimacy when it is seized for interim relief in the form of provisional measures, permitted by Article 41 of the ICJ Statute. At the provisional measures stage, the ICJ must satisfy itself that it has *prima facie* jurisdiction only, conducting a more robust and fulsome analysis of jurisdiction later at the merits stage. In at least three cases, the Court found it had *prima facie* jurisdiction at the provisional measures stage and then, after millions of dollars spent and several years, determined it lacked jurisdiction to entertain the Applicant's claims on the merits – for example in *Anglo Iranian Oil Co. (United Kingdom v. Iran)*, *Legality of Use of Force (Yugoslavia v. Belgium and others)*, and *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*.

When a State files an application with the Court on dicey jurisdictional grounds primarily to obtain provisional measures, the Court's legitimacy is at risk. The Court may issue a provisional measures order with substantial legal and political ramifications, and then change its mind about whether it had authority over the case at all. In effect, the Court is empowered to make a high-stakes decision in an ongoing armed conflict on tenuous jurisdictional grounds. States undoubtedly – and sometimes justifiably – will question the Court's legitimacy when it issues orders binding a Respondent State when its jurisdiction *ratione materiae* is fragile.

Prosecutorial Discretion at the ICC

Prosecutorial discretion at the ICC presents another significant legitimacy challenge, due to a lack of "coherence," a concept Tom Franck described in *The Power of Legitimacy Among Nations*. The idea is simple: like situations must be treated in a like manner. The application of a rule must be consistent across like cases to generate compliance pull, that is, to increase the likelihood that states will comply with it (pages 135-49). Procedures must be fair and impartial, they must appear to

be fair and impartial, and both procedures and law need to be consistently applied across situations.

Especially in its early years, the ICC faced doubts about its legitimacy when observers perceived it as overly focused on situations in Africa versus other regions of the world, whether such criticism was justified or not. More recently, the ICC's application of the complementarity standard in uneven ways to different situations has raised similar concerns. The Venezuela situation is instructive. In support of a request for recusal of the ICC Prosecutor, the Office of Public Counsel for Victims noted victims' "deep sense of frustration, feeling that their plight has not been given the same priority by the Prosecutor as in other situations where investigations have advanced more swiftly and led to the issuance of several arrest warrants," and their "serious concerns regarding the Prosecutor's continued emphasis on pursuing a 'positive complementarity' track," especially after severe, violent repression following the July 2024 election (para. 34). Further, a UN Factfinding Mission assessing the Venezuelan justice system found as early as 2021 that there were "reasonable grounds to believe that instead of providing protection to victims of human rights violations and crimes, the justice system has played a significant role in the State's repression of Government opponents" (para. 119). Despite clear signals that the Venezuelan justice system had no intention genuinely to investigate or prosecute, and instead appeared complicit itself in human rights violations, no arrest warrants have been forthcoming. The Prosecutor has arguably acted with less patience and more skepticism in pursuing positive complementarity in other situations, without such justice system condemnations.

Inconsistent application of the complementarity standard is an example of Tom Franck's coherence problem. When the rules are applied unfairly, or appear to be so, concerns about the justified authority or legitimacy of the institution are an unsurprising consequence. Failure to address these shortcomings risks not only the ICC's legitimacy, but also its ability to play an important and necessary role in pursuing accountability in both current and future conflicts.

Conclusions

Legitimacy issues can arise in many ways when international courts act in ongoing armed conflicts. This short post highlights only a few key issues and does not, for example, address the relationship between legitimacy and effectiveness or justice, or whether or in what circumstances international courts help States better to comply with their legal obligations than they would in the absence of such international courts' engagement, as Joseph Raz might encourage us to consider. Nor does it consider potential reforms or interpretive approaches that might address these concerns, or how States and other actors might change their behavior to buoy international courts' legitimacy.

In short, many more questions and issues remain for consideration and reflection on the relationship between legitimacy and international courts seized to play a role in ongoing armed conflicts. If we wish to protect the rule of law and these institutions' roles in upholding it, we must seek to better understand and address these legitimacy challenges.

[back to contents](#)

WORTH READING

To Kill or Not to Kill – the Use of Force against Legitimate Targets in Armed Conflicts
(Wrocław Review of Law, Administration & Economics) By Patrycja Grzebyk
August 27, 2019

INTRODUCTION

Armed conflicts involve killing, injuring, devastating. The International Humanitarian Law (IHL) accepts this reality, but limits the categories of persons and objects which can be attacked, as well as the means and methods by which they can be attacked. However, the main conventions of the

IHL, i.e. the Geneva Conventions of 12 August 1949 (GC) and their Additional Protocols of 8 June 1977 (AP), contain no indication as to how much force can be used against legitimate targets.

Article 49 AP I defines attacks as “acts of violence against the adversary, whether in offence or in defence.” It provides no explanation as to what level of violence can be used in those acts. Therefore, for decades a vigorous debate has continued between scholars. Some argue that there is always an obligation to use the least harmful method against legitimate targets, which means capturing or injuring instead of killing if possible (in the chapter they are referred to as the “capture faction”). Others claim that a person who is a legitimate target can be killed without an attempt to capture or an attempt to use lesser force in order to achieve the same aim, i.e. elimination of the enemy (in the chapter they are referred to as the “kill faction”).

This debate was reinvigorated with the adoption, by the Assembly of the International Committee of the Red Cross, of the Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law (Interpretive Guidance) on 26 February 2009. Its Section IX promotes the gradual use of force towards legitimate targets. The ICRC’s proposition was met with strong criticism and opened, once again, the discussion on the scope of methods that can be used against legitimate targets. The “kill or capture” dilemma also gained greater importance with the broadening of geographical scope of armed conflicts to which the IHL is supposed to be applied. According to the most radical interpretations, an armed conflict can encompass the whole globe. Thus states are free to use the IHL approach instead of the more restrictive HRL standards to decide on the use of lethal force against particular persons.

The practice of targeted killings against fighters of terrorist groups like Al-Qaeda, Daesh etc., which is allegedly justified in terms of International Humanitarian Law, is another symptom of this tendency. Both sides of the dispute on the “capture or kill” dilemma refer to customary law. What they interpret differently is the practice of states. The questions of content of customary International Humanitarian Law and the methodology of its assessment have been contentious for years. The International Committee of the Red Cross’ Study on Customary International Humanitarian Law did not put an end to this discussion. Notably, prof. Karol Wolfke was involved in the work leading up to the final draft of the Study. He was able to observe firsthand how difficult it was to agree on what should or should not be considered proof of existence of a customary norm.

The main line of disagreement is the following: should we take into account only the actual conduct of the state’s various bodies in the field, or should we should rather focus on the official statements, hypocritical as they may sometimes be? In this context, the words of prof. Wolfke should be noted: “Custom is built up (...) by practice, and not only by a promise of practice or by opinions as to its necessity.” The aim of this chapter is threefold. Firstly, it is to present arguments derived from the IHL norms against the existence of an obligation to use the least harmful method against legitimate targets in armed conflicts. Secondly, it is to assess the argumentation (also based on the IHL) in favour of the existence of an obligation to minimize force used against legitimate targets. In both cases, advantages and disadvantages of each of the solutions will be presented. Thirdly, it is to assess the possibility of using other regimes to solve the dispute between two above-mentioned approaches and find some “golden means”.

In the article, I do not delve into the doubts concerning who and what constitutes a legitimate target. I take it as granted that in all the cases discussed below, the person is a legitimate target (e.g. the person is a combatant in an international armed conflict or a member of an armed group with a combat function in a non-international armed conflict, or a civilian who takes direct part in hostilities in any kind of armed conflict)¹³ and thus not protected against attacks. I also assume that in all situations discussed below, the IHL is applicable, because an armed conflict exists.

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[back to contents](#)

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AM

where are the war crimes v. the current US administration?

they have committed plenty.

dianne