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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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AFRICA

NORTH AFRICA

Libya

Libyan authorities order the arrest of three suspects in killing of Saif al-Islam Gaddafi (Africa News) By
Rédaction Africanews and Agencies
March 6, 2026

Libyan authorities have ordered the arrest of three suspects in last month's assassination of Saif al-Islam Gaddafi, the public prosecutor's office said on Thursday.

Investigators say there are three suspects in Gaddafi's killing and claim to know when and where the murder took place. No further details were given.

Gaddafi was assassinated on February 3 in the north-western city of Zintan.

Authorities said an initial investigation found that he was shot to death but did not provide further details. Saif al-Islam's political team later released a statement saying "four masked men" had stormed his house and killed him in a "cowardly and treacherous assassination," after disabling security cameras.

The son of Libya's long-time leader Muammar Gaddafi, Saif al-Islam was considered the reformist face of his father's regime.

But Muammar was toppled and killed during a NATO-backed uprising in 2011 and Saif al-Islam was captured.

He was released in 2017 and had since lived in Zintan, despite being sentenced to death by a court in eastern Libya.

Since the civil war, Libya has been divided between two rival governments in the east and west.

Authorities in Zintan refused to hand him over and for his supporters, he became a symbol of reconciliation and national unity.

Gaddafi announced he would run for president in 2021 but was disqualified. Polls aiming to unify the country under a UN agreement have been indefinitely postponed.

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CENTRAL AFRICA

Central African Republic

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

ICC Appeals Chamber confirms decision on inadmissibility of the case against Edmond Beina (ICC Press Release) March 11, 2026

Today, 11 March 2026, the Appeals Chamber of the International Criminal Court (ICC) confirmed Pre Trial Chamber II's Decision on the Central African Republic's challenge to the admissibility of the case against Edmond Beina.

On 12 September 2025, Pre-Trial Chamber II determined that the case against Mr Beina before the ICC is inadmissible under article 17(1)(a) of the Rome Statute. The Pre-Trial Chamber assessed information before it concerning the ongoing case against Mr Beina before the "Cour pénale spéciale" in the Central African Republic, and found that the Central African Republic was willing and able to genuinely investigate and prosecute the case against Mr Beina.

The Defence for Mr Beina appealed this decision, raising five grounds of appeal.

Today, in a public judgment read in open court, the Appeals Chamber rejected the five grounds of appeal of the Appellant and found that the Appellant has not demonstrated any error in the approach or findings of the Pre-Trial Chamber. Accordingly, the Appeals Chamber confirmed the decision of Pre-Trial Chamber II.

Judgment on the appeal of Mr Edmond Beina against the decision of Pre-Trial Chamber II entitled "Decision on the Central African Republic's challenge to the admissibility of the case against Edmond Beina"

Background: On 7 December 2018, ICC Pre-Trial Chamber II issued a warrant of arrest against Mr Beina for crimes against humanity and war crimes allegedly committed in Guen between at least 1 February to early April 2014. On 3 May 2022, the "Cour pénale spéciale" in the Central African Republic issued a warrant for the arrest of Mr Beina.

In June 2024, Mr Beina was arrested in the Central African Republic, and in October 2024, the Central African Republic challenged the admissibility of Mr Beina's case before the ICC.

The Appeals Chamber in this appeal is composed of Presiding Judge Gocha Lordkipanidze, Judge Tomoko Akane, Judge Luz del Carmen Ibáñez Carranza, Judge Solomy Balungi Bossa, and Judge Erdenebalsuren Damdin.

Central African Militia Leader Dies in Custody (Human Rights Watch) By Lewis Mudge
March 13, 2026

Earlier this week the Special Criminal Court in the Central African Republic (CAR) announced that Maturin Kombo, who was in the court's custody charged with crimes committed in 2014, died in hospital in Bangui.

Twelve years ago, as CAR was in the throes of a civil war, I arrived in the village of Guen, in the southwest of the country, to conduct research. While there, we confirmed that in early February 2014, anti-balaka forces had attacked Muslim civilians, killing at least 72 men and boys, some as young as nine.

I will never forget a conversation I had with the father of 10-year-old Oumarou Bouba. "As we were running away, he was shot," he told me. "He fell down, but they finished him off with a machete."

Anti-balaka militias rose up across CAR to fight the Seleka, a predominantly Muslim coalition that took control of the country in 2013. They began to target Muslim civilians, particularly in the west, equating them with

Seleka or their sympathizers.

At the time, we met with Maturin Kombo an anti-balaka leader who was in charge in Guen. He denied the massacre occurred but was open about his disgust towards Muslims. He was a brazen and proud leader who thought he could evade justice.

Then the transitional government created the Special Criminal Court (SCC) to help curb widespread impunity. The court is mandated to investigate and prosecute grave crimes committed during the country's armed conflicts since 2003 and is staffed by both international and national judges and prosecutors. It began its work in 2018 and Kombo was arrested in 2022.

The trial against him and six other co-defendants, including fellow anti-balaka leader Edmond Beïna, for the atrocities in Guen is ongoing.

The fact that Kombo will not see the end of the trial is a loss for survivors and relatives of victims of the massacres. But his death also highlights the continued need for justice, for the crimes committed in Guen and elsewhere in the country, and the key role the SCC plays in delivering it. The Central African government and the court's international partners should step up efforts to ensure the court has the resources it needs to continue its essential work and can deliver on its crucial mandate.

Kombo may have died before the end of his trial, but the ongoing proceedings against his co-defendants provide hope that justice, no matter how long it takes, will be served.

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EUROPE

The Court of Bosnia and Herzegovina, War Crimes Chamber

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

Serb War Criminals Given Financial Grants by Bosnian Municipality (Balkan Insight) By Jasmin Begic
March 9, 2026

Former soldiers Ilija Zoric and Ljubisa Cetic received financial assistance from the City of Prijedor's budget even though they were both convicted under final verdicts of committing war crimes in the local area, where victims' relatives still live, BIRN has learned.

Zoric was sentenced to 20 years in prison for participating in the killings of at least 150 Bosniak civilians in the village of Zecovi near Prijedor in 1992, while Cetic was sentenced to five years in prison for the inhumane treatment of one person during the Zecovi massacre.

The two wartime Bosnian Serb Army soldiers were given the money by the Prijedor administration for housing support and medical treatment for relatives.

The assistance was granted under a scheme instituted by the Serb-led City of Prijedor, which provides financial assistance to war veterans and relative of deceased soldiers. However, allegations have been made that the grants contravene Bosnian state legislation about providing privileges to war criminals.

Zoric has been on the run since January 2024, and assistance in his name from the Prijedor city budget was paid out 11 months after he absconded. Cetec began serving a sentence in March last year, and in the same month he also received financial assistance from the Prijedor budget.

Documents obtained by BIRN show that the Prijedor City Administration approved the payment of financial aid to Cetec on three occasions over the past two years, totalling just over 1,000 Bosnian marks (about 500 euros).

Financial assistance in the amount of 2,000 Bosnian marks (about 1,000 euros) was paid to Zoric in December 2024, five months after he was convicted of a war crime in a final verdict.

Slobodan Javor, the mayor of Prijedor, acknowledged the payments in a written response to BIRN, but did not respond to phone calls or other inquiries.

Fikret Bacic, who is still searching for the remains of his wife and children as well as more than 20 other family members who were killed in Zecovi on the day that the crimes were committed by Zoric and Cetec, said he was outraged by the decision of the city where he lives to help war criminals, especially one who is on the run.

“They are not criminals to [the Prijedor authorities], but heroes, a protected category,” said Bacic.

Prijedor was the scene of some of the worst war crimes committed by Bosnian Serb fighters and police in the first year of the 1992-95 war. It is part of the Serb-dominated Republika Srpska entity, where officials have been repeatedly accused of denying the atrocities committed – despite state-level legislation prohibiting this.

Afre a freedom of information request, the Prijedor city administration provided BIRN with documents confirming payments from the budget for Zoric, including a preliminary estimate for building a roof.

Speaking to BIRN, lawyer Sabina Mehic noted that the criminal code of Bosnia and Herzegovina says that if someone awards an honour, award, medal or any privilege to a person convicted of a war crime under a final verdict, they may be punished with a prison sentence of at least three years.

“According to my interpretation of the provisions, the mayor can be held accountable for financial assistance to convicted war criminals,” said Mehic, adding that she believes the person who signed the funding decision can also be held responsible.

Opinions differ about whether the granting of such financial assistance constitutes a crime, however.

Adrijana Hanusic Becirovic, a transitional justice expert, told BIRN that there is no explicit regulation prohibiting the granting of financial assistance to people convicted of war crimes, but this does not justify such conduct.

“After the court issued a final verdict with the aim of fulfilling the purpose of punishment, financial support from the local community to that same individual undermines all the objectives that are sought to be achieved by an adequate punishment,” Hanusic Becirovic said.

She also noted that financial assistance to a person on the run can, under certain circumstances, represent indirect assistance to avoiding the execution of the sentence.

“With such action, social condemnation is replaced by social support, while the preventive effect of punishment is replaced by a message to others that even people who killed innocent civilians, women and children, during the war can expect support from public authorities at a certain point,” she added.

The Zecovi case was not the only trial in which Ljubisa Cetec was convicted. He was also found guilty and sentenced to 15-and-a-half years in prison in 2010 for participating in the murders of around 200 men at the Koricani Cliffs on Mount Vlasic. In 2024, he was then sentenced to five years in prison for the crime in Zecovi, after which his total sentence was set at 20 years.

Zoric’s verdict in the Zecovi laid out how he and other troops from the Bosnian Serb Army’s 43rd Prijedor Brigade and various policemen went on July 25, 1992 to the house of a man called Hasan Bacic, knowing that only Bosniak women and children were inside – with the intention of killing them.

According to the verdict, one of the troops shouted: “Is there anyone in the house?”, to which a woman called Sehrija Bacic loudly replied from inside: “There are only women and children here.” The soldier shouted: “Everyone get out!”

When all the children and women were gathered in a group outside, Zoric and the person who ordered them to come out opened fire on them, the verdict said. Those who were not immediately killed by the gunshots were finished off with a pistol. All the children and women were killed, apart from one 15-year-old who, amid the chaos, managed to hide near the house and survived.

Among the civilians who were killed were Minka Bacic and her two children – Nermin and Nermina, aged 13 and six – the wife children of Fikret Bacic, who witnessed the massacre from nearby.

Bacic said that fact that Republika Srpska institutions financially support people convicted of war crimes does not surprise him.

“It is not news, it is an open secret, a ‘normal thing’ that the City Administration finances them,” he said.

Hanusic Becirovic said that councils granting money to war criminals makes any prospect of post-conflict reconciliation more difficult.

“A particularly problematic consequence of providing support to war criminals is how it inflicts pain on the families of innocently killed persons,” she added.

She noted that in the Zecovi case, surviving family members have returned to their former homes and are still searching for the remains of the women and children who were killed.

“The reason they cannot be found and buried with dignity in accordance with religious customs is, amongst other things, the unwillingness of those who were convicted, like Zoric, to share information about where they hid their bodies after they killed them,” she said.

Zoric was still on the run at the time of publication of this article. The Court of Bosnia and Herzegovina told BIRN in a written response that since requesting an Interpol ‘red notice’ for his arrest in January 2024, it has not received any new information about his whereabouts.

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Russia

EU Sanctions Individuals Involved in Atrocities in Kyiv Region (United24 Media) By Katherina Popilnichenko
March 16, 2026

The European Union has expanded its sanctions list to include Russian military personnel linked to mass killings and war crimes in Bucha and other areas of the Kyiv region. These crimes included the execution of hundreds of civilians, torture, and looting.

Reports also detailed cases of forced labor, where residents were coerced into cleaning up the bodies of dead soldiers, as well as the illegal deportation and forced adoption of children from occupied territories.

On March 16, the Council of the EU announced restrictive measures against nine individuals involved in the events that took place during the occupation of the region from February to March 2022.

The Council of the EU stated that on the fourth anniversary of the Bucha massacre, it adopted measures against nine people who played significant roles in these events.

According to the official statement, these individuals are “responsible for actions that undermine or threaten the territorial integrity, sovereignty, and independence of Ukraine.”

Among those added to the list is Colonel General Alexander Chaiko. He served as the commander of the

Eastern Military District and was the highest-ranking Russian military officer in Ukraine at the start of Russia's full-scale invasion of Ukraine. The EU Council explained that Chaiko held the top command position "when Russian forces invaded Bucha."

The updated list also includes other high-ranking officers who commanded troops during the initial stage of the aggression. These officers led units in Bucha, Hostomel, Irpin, and Borodianka.

The list features Major General Serhii Chubarykin, Colonel Andrii Kondrov, and Colonel Artem Gorodilov. The EU reports that these individuals "led their units during the killings of hundreds of civilians, in some cases during brutal executions."

The announcement further detailed that "troops under their command were also involved in looting, torture, and forcing civilians to clean up the bodies of dead Russian soldiers."

One individual on the list is also "responsible for the adoption of a child from the Russian-occupied Donetsk region, who was illegally deported to Russia." The EU press release stated that "their actions are crimes against humanity and war crimes."

As a result of these sanctions, the assets of the nine individuals are frozen, and EU citizens and companies are prohibited from providing them with funds.

They are also banned from entering or traveling through EU member states. Currently, EU personal sanctions related to Russia's full-scale invasion of Ukraine apply to approximately 2,600 individuals and entities.

Additionally, the EU announced sanctions against four individuals involved in Russian hybrid activities and information manipulation. This includes Russian propagandist Serhii Klyuchenkov, who "played an active role in spreading Russian propaganda and disinformation aimed at justifying Russia's war of aggression against Ukraine."

Others sanctioned for similar activities include television presenter Ernest Matskyavichyus, British national Graham Phillips, and former French soldier Adrien Bocquet, who holds Russian citizenship.

Following the liberation of the region in early 2022, investigators documented the scale of the violence. In the Kyiv region alone, the bodies of 1,590 civilians were discovered. Among the victims, 422 were found in the city of Bucha, where many showed signs of torture and execution-style killings.

Ukrainian law enforcement officers identified a Russian serviceman responsible for the attempted murder of a civilian during the occupation of Bucha in March 2022.

The suspect, a platoon commander of the Russian 234th Airborne Assault Regiment, opened fire on a local resident who was returning home. Although the man tried to hide, the soldier found him and fired another shot before kicking his body and leaving him for dead.

Despite the injuries, the victim survived the attack, which marked the second time this specific serviceman was accused of crimes against Ukrainian civilians.

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MIDDLE EAST

Syria

Ex-Syrian intelligence officer appears in UK court charged with crimes against humanity (Reuters) By Michael Holden
March 10, 2026

A former member of Syria's Air Force Intelligence attended a British court hearing via videolink on Tuesday charged with crimes against humanity and torture relating to the suppression of pro-democracy demonstrations in Damascus in 2011.

Salem Michel Al-Salem, 58, who now lives in Britain, appeared virtually at the hearing at London's Westminster Magistrates' Court from his home. He was wearing a breathing apparatus mask and the court was told he suffered from degenerative motor neurone disease.

Al-Salem is charged with three counts of murder as a crime against humanity relating to deaths in April and July 2011 "as part of a widespread or systematic attack against a civilian population with knowledge of the attack".

He is also accused of three charges of torture relating to incidents in 2011 and 2012, and one of conduct ancillary to murder as a crime against humanity. He did not speak during the hearing and there was no indication as to how he would plead.

His lawyer Sean Caulfield told the court that Al-Salem was too unwell to confirm his name.

The seven charges were brought under a British law that allows the prosecution of serious international crimes committed abroad. The Crown Prosecution Service said it was the first time it had brought charges of murder as crimes against humanity.

In 2005, Afghan warlord Faryadi Zardad was convicted by a British court of torture that had taken place in Afghanistan.

Al-Salem, who has sought indefinite leave to remain in Britain, was a colonel in the Syrian Air Force Intelligence department with oversight of the Information Branch in the district of Jobar, to the east of central Damascus, British prosecutors say.

He is accused of leading a group tasked with quelling the demonstrations, which mostly occurred during Friday afternoon prayers. Prosecutors say he gave his men orders to open fire on protesters, which led to the deaths of some individuals.

Prosecutors say he was also present at, or took part in, the torture of men at the Information Branch building.

Al-Salem was first arrested in central England in December 2021. His lawyer had sought an order to withhold his name, arguing it could pose a risk to his safety. England's Chief Magistrate Paul Goldspring rejected the application but ordered that his address not be made public.

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TOPICS

Gender-Based Violence

The Genocide of Yazidis on Trial Before French court (JusticeInfo.Net) By Chloe Dubois
March 13, 2026

On March 16, the trial of French jihadist Sabri Essid is set to open

before the Paris Assize Court. Although presumed dead, he is being prosecuted for genocide and crimes against humanity targeting the Yazidi population. This is a first in France.

The trial will of course take place without the accused, but it remains “extremely important”, according to civil parties’ lawyer Clémence Bectarte. In France, she says, it could constitute the first judicial recognition of the genocide committed by Islamic State (IS) against Yazidis in Syria and Iraq. And for the survivors she represents, it is above all important to get recognition, at least in part, for “the crimes they have suffered” -- atrocities perpetrated as part of a vast policy of extermination and enslavement specifically targeting the Yazidi community. The Yazidis are a Kurdish-speaking ethno-religious minority. IS, which many states class as a terrorist organization, considers them to be “devil worshippers”.

Sabri Essid, alias Abu Doujanah al-Faransi, is to be tried before the Paris Assize Court starting March 16 for his alleged participation in these crimes. Born in Toulouse in 1984, this French jihadist joined IS in Syria in 2014 before joining Amniyat, the branch responsible for internal security and intelligence for ISIS (Islamic State in Iraq and Syria). Presumed dead since 2018, he will be tried in absentia.

This man is being prosecuted for inflicting, between 2014 and 2016, “serious physical or psychological harm”—constituting genocide—on five Yazidi women and their children, as part of a “concerted plan” aimed at the “total or partial destruction” of their community. Essid is also accused of enslaving four of them after buying, raping, torturing, persecuting, and subjecting them to inhumane treatment constituting crimes against humanity. Finally, he is being prosecuted for “complicity” in these crimes, for transferring a fifth woman and her three children “to a new place of enslavement”, where they were allegedly subjected to the same violence.

This is a first in France. Until now, French nationals who joined Islamic State have mainly been prosecuted for terrorist offences, not for crimes against civilian populations. But this will undoubtedly not be the last such case, since the proceedings against Essid are part of a much broader investigation focusing specifically on crimes committed by IS jihadists in Syria and Iraq.

A policy of extermination and enslavement

It all started in August 2014. IS launched a series of coordinated attacks in the Sinjar region of northwest Iraq, the cradle of the Yazidi population. Within a few days, thousands of people – mostly men -- were executed or captured. At the same time, tens of thousands of others took refuge in the mountains to try to escape the assault. They quickly found themselves trapped, surrounded by IS fighters, in particularly extreme conditions. More than 1,700 people—almost all of them children—died of starvation, dehydration, or their injuries.

But the offensive was only the first step in a much broader policy aimed at enslaving or exterminating the Yazidi population, described by ISIS as “an idolatrous sect of original infidels”. The jihadists systematically implemented this policy, displacing and categorizing members of the community according to their age or gender. Men and teenage boys were ordered to convert. If they refused, they were immediately executed or subjected to forced labour. Young boys were converted and recruited into the group’s ranks, while women and girls over the age of eight were captured to be sold as sex slaves and domestic servants, or directly “offered” to jihadists. Among them are the five Yazidi women identified as Essid’s alleged victims.

According to Bectarte, three of them have filed civil suits with their children, and two of them are expected to be present at the hearing. Another one “now wants to turn the page”, she says, while a fifth has never been found. For these survivors, “the psychological trauma remains extreme, regardless of where they live today,” the lawyer stresses.

Investigations target 18 French nationals

In 2016, as the group’s genocidal policy continued, the war crimes unit of the National Anti-Terrorism Prosecutor’s Office (PNAT) opened a so-called “structural” investigation. It aims to identify and prosecute French nationals involved in abuses against all minorities in Syria and Iraq, including those committed in the context of the Yazidi genocide.

These investigations draw particularly on the work of several international investigative mechanisms, as well as that of civil society organizations like the Iraqi association Kinyat and the International

Federation for Human Rights (FIDH). These organizations have helped identify several Yazidi women, some of whom were former captives of ESSID, according to Bectarte. She also represents the two NGOs in the proceedings.

According to Sophie Havard, head of the PNAT's specialized unit, this is a "very active" investigation that has made it possible to "open and substantiate a significant number of proceedings". A total of 18 French nationals are being targeted for their alleged involvement in these crimes. More specifically, Havard explains, four individual investigations are ongoing against seven women and three men, while six judicial probes have been opened concerning five women and three men. These cases have all been classified as both terrorist crimes and international crimes, she adds, "with the exception of the case concerning Sabri ESSID, as the terrorism aspect is still under investigation".

Among the most advanced cases is that of Sonia Mejri and her ex-husband Abdelnasser Benyoucef, alias Abou Mouthana, presumed dead since 2016. This case is set to be the first trial of a French woman charged with both offences. It is scheduled for March 2027, despite several legal twists and turns. Before the indictment was confirmed, Mejri's defence team had got the charges of genocide and crimes against humanity—of which she is notably accused—dismissed before the investigating chamber of the Paris Appeal Court. The judges had ruled that a single identified victim was not sufficient to characterize genocide and that the charges were insufficient with regard to crimes against humanity, explains her lawyer Marceau Perdereau. However, the Court of Cassation partially overturned this, ruling that an act committed against a single person could constitute genocide if it was part of a "concerted plan". The decision of the first investigating chamber was ultimately overturned by a new panel of judges at the Paris Court of Appeal.

Women's responsibility in the genocide

Havard says this case "illustrates the difficulties in understanding highly complex criminal charges", particularly when assessing the role of women who joined IS and "their criminal behaviour". "The challenge is to understand their responsibility in its entirety," explains the magistrate. This involves, in particular, "deconstructing" certain defence strategies that present these women "as mere wives, victims under influence who had no choice and no say in the enslavement of Yazidi women".

More specifically, the prosecution is seeking to establish whether some of them participated in the IS system of enslavement by holding Yazidi captives in their houses, facilitating their sexual or domestic exploitation, or contributing to their surveillance. This is particularly important, Havard continues, because even though "the women were initially assigned to the domestic sphere", this private sphere could function "as a kind of Islamic micro-state" in which "some women were responsible for controlling the slaves" -- especially in the absence of their husbands.

Perdereau says his client has stated since the beginning of the proceedings that "the fate of the Yazidis was one of the first factors that motivated her ideological disengagement". According to him, she "would never have been charged if she had not spontaneously mentioned the presence of a young Yazidi woman held in her home by her ex-husband".

However, other cases could further clarify the scope of these charges. This is particularly true in the case of Lolita Cacitti, a French national who returned from Syria and is suspected of having participated in the enslavement of a Yazidi child. According to the investigation, she allegedly handed the young captive over to a Saudi IS fighter who claimed ownership of her. Last January, the PNAT requested that Cacitti be referred to the criminal court for complicity in genocide. A third trial could therefore be organized around this case, subject to the decision of the investigating judges and any appeals.

While the qualification of the criminal charges is particularly relevant for women, they would also have to appear in person before the French courts. Of the twelve women targeted by proceedings, four have been repatriated to France and are currently in detention. Conversely, five of the six men implicated are presumed dead, including ESSID. According to the specialized unit, the other nine individuals are thought to be alive but probably still in north-western Syria, either free, detained, or held in camps.

The trial of the "presumed dead"

When asked about the merits of trying in absentia a person who is presumed dead, Havard acknowledges that "the debate exists". However, criminal law allows it "when we do not have absolute certainty of death". The magistrate also points out that this is a "long-standing" practice of the PNAT in

terrorism cases. On the other hand, it is unprecedented for international crimes.

Under these circumstances, Essid is expected to be tried without any specific representation at the hearing or any defence. The crimes he is accused of will also be examined by a “special” panel of three professional magistrates, without a jury. “If we choose this form of justice by default,” Havard continues, “it is to help end the impunity for these crimes. And to give a trial to the victims who have been waiting for justice for the past ten years”. This is a criminal policy to which Bectarte subscribes, given that there have already been cases of French fighters presumed dead reappearing.

She says Essid’s trial should lead to the first judicial recognition in France of the genocide committed against the Yazidis, despite the French jihadist’s absence and the fact that these women “were sometimes held captive by eight, nine, ten or fifteen men”. Essid’s trial represents the judgment of only one alleged perpetrator, but should make it possible to document the extent of abuses committed against the Yazidi community. This is “essential”, the lawyer concludes, “given the instability and risks of an Islamic State resurgence in Syria”.

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Commentary and Perspectives

Legal and Operational Issues in the Strait of Hormuz: Transit Passage Under Fire (Just Security) By Mark Nevitt
March 15, 2026

The Strait of Hormuz — a narrow chokepoint through which roughly 20 percent of the world’s oil transits — is now an active conflict zone. Iranian forces have struck multiple neutral merchant vessels and may be laying naval mines in the Strait, threatening one of the most important shipping routes in the global economy.

Secretary of Defense Pete Hegseth has told the world that “we don’t need to worry about it.” I disagree —the security situation in the Strait is a source of immense worry, is acutely dangerous, and there is no easy fix. What’s more, as I discuss below, the U.S. Navy’s very recent decommissioning of an entire class of minesweepers, without an effective ready replacement, makes an already precarious situation worse.

The Strait’s unique geography also provides a textbook case of asymmetric warfare that favors Iran; a naval mine or drone costing thousands can cause billions of dollars in economic or physical damage. And the mere perception of such a threat is enough to shut the Strait down indefinitely. During my own transits through the Strait as a naval officer aboard the aircraft carrier USS Constellation, the narrow geography and proximity of Iranian territory were impossible to ignore. Even in peacetime, we took significant force protection measures with helicopters airborne and aircraft on alert as ships passed through.

And today we are in far more dangerous times.

What’s more, there are reports that Iran may already be mining the Strait, a significant escalation that could shut down one of the world’s most critical shipping lanes, depending on the extent of the mining. Any attempts to demine the Strait and engage in defensive mine countermeasures will be difficult, if not near impossible, during a raging armed conflict. In the interim, maritime insurance rates are skyrocketing, fuel prices are rising, and merchant vessels laden with oil, gas, and fertilizer are staying clear of the Strait of Hormuz until their physical security can be guaranteed.

Below, I address the key legal and operational questions that will define how the conflict over the Strait unfolds — and how international law constrains (or fails to constrain) Iran’s actions.

What law governs maritime shipping through the Strait of Hormuz?

The Strait of Hormuz is an international strait within the meaning of Article 37 of the UN Convention on the Law of the Sea (UNCLOS), which applies to straits “used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone.” The outbreak of hostilities does not necessarily suspend UNCLOS. While the Strait of Hormuz is bordered by Iran to the north and Oman to the south, it is legally an international strait. Iran does not own the Strait of Hormuz, but it can effectively control maritime movement through the Strait based on its physical proximity. The Strait of Hormuz is legally distinct from the Turkish Straits linking the Mediterranean Sea with the Black Sea—a key waterway in the Russia-Ukraine War. The Turkish Straits are governed by the Montreux Convention, where Turkey has special legal authorities to regulate maritime traffic.

In the Strait of Hormuz, the right of transit passage is afforded to all ships and aircraft that transit the strait, a permissive legal right that “shall not be impeded”—even in times of war. All vessels and aircraft—military and civilian—have the legal prerogative to exercise the right of transit passage through the Strait of Hormuz, provided that these ships and aircraft proceed without delay through the Strait of Hormuz, transit in their normal modes of operation, and refrain from using force against any nation bordering the Strait. Although Israel, Iran, and the United States are not parties to UNCLOS, the transit-passage regime for international straits is widely regarded as customary international law and binding on all States. Iran’s actions to block the strait are contrary to both the letter and spirit of UNCLOS and applicable customary international law.

What are the challenges in transiting the Strait of Hormuz?

Practically, the Strait of Hormuz is the only way to get oil, natural gas, fertilizer, and other goods from the Persian Gulf to international markets. Geographically, the Strait of Hormuz is extraordinarily narrow in parts, with just 20 miles separating Iran from Oman at one point in the Strait. Naval officers and civilian mariners are rightfully wary of running aground—a real concern for heavily-laden oil tankers and merchant vessels. And there are just two narrow corridors within the Strait itself for entering and exiting the Persian Gulf, thus making it exceedingly easy to identify, track, and target any vessel that transits the Strait.

While there are reports of 2,500 U.S. Marines deploying to the region, a successful occupation of the southern tip of Iran bordering the Strait will not by itself immunize shipping from threats. And such an amphibious landing would be incredibly dangerous. Iran has already demonstrated the capacity to launch Shaheed drones — with a range of 1,000 miles — from virtually anywhere in Iran. The drone threat makes it difficult — if not impossible — to guarantee safe passage through the Strait within the foreseeable future.

Are Iranian actions violating international law? Where do things stand?

Yes. Reports indicate that Iran has targeted civilian merchant vessels from Thailand, Japan, and the Marshall Islands; up to 16 civilian vessels have been struck in total. Crewmembers and the vessels themselves are neutral — not belligerents — to the armed conflict with Iran. These Iranian strikes unlawfully target neutral, civilian objects and violate the fundamental principle of distinguishing between civilian and military objectives under international humanitarian law. To be sure, there are key questions about the legality of the underlying legal justification for the war with Iran, as Kate Brannen, Tess Bridgman, and Ryan Goodman at Just Security have posed, but the attacks on civilian merchant vessels are clearly unlawful.

Does Iran have the capacity to mine the Strait of Hormuz?

Yes, and Iran possesses numerous naval mine variants that could be used. According to the U.S. Defense Intelligence Agency, Iran has 5,000 naval mines in its arsenal and has likely planned for such a scenario for decades. In 1988, a U.S. Navy vessel, the USS Samuel B. Roberts, struck a mine in the Persian Gulf laid by Iran, snapping the warship’s keel and nearly sinking the vessel. Naval mining technology has gotten much more sophisticated since that tragic incident. And the Strait of Hormuz is just 200 feet deep at its narrowest point, plenty shallow to lay a minefield to halt or throttle traffic.

Is mining the Strait of Hormuz lawful?

No. While naval mining is not unlawful per se, placing mines in an international strait in a manner that effectively denies transit passage to neutral shipping is widely understood to violate both the law of

naval warfare and the law of the sea.

Indeed, one of the earliest international humanitarian law treaties, the 1907 Hague VIII Convention on the “Laying of Automatic Submarine Contact Mines,” was negotiated in response to the widespread and destructive naval mining that took place in the Russo-Japanese War, which killed hundreds of civilians well after the war’s hostilities. Hague VIII specifically prohibits the “lay[ing] of contact mines off the coast and ports of the enemy with the sole object of intercepting commercial shipping.” And Hague VIII specifies that unanchored contact mines (which Iran possesses) must become harmless within one hour after loss of control over them. Anchored mines must become harmless as soon as they are broken from their moorings.

In theory, a belligerent power may lawfully employ naval mines in an armed conflict, but mine placement in the Strait of Hormuz is illegal because there is no alternative convenient or commercially acceptable route available to neutral merchant shipping. The San Remo Manual on International Law Applicable to Armed Conflicts at Sea emphasizes that belligerents may not mine international straits in a manner that effectively blocks neutral transit. Here is the influential Newport Manual on the Law of Naval Warfare’s discussion on mining straits during an active armed conflict:

Mining of a belligerent’s own waters within a strait where the right of transit passage or non-suspendable innocent passage applies . . . is lawful provided that an alternative convenient or commercially acceptable route is available to neutral merchant shipping.

The U.S. Navy’s Handbook on the Law of Naval Operations reiterates this prohibition, stating that naval mines may not be placed in a manner to deny transit passage of international straits. Furthermore, there is a general obligation for States to take feasible precautions under the law of war—this applies when using naval mines; every possible precaution must be taken for the security of peaceful shipping.

What are the Operational Risks in “Demining” the Strait of Hormuz?

Many. Once an area has been mined, it is often virtually impossible to guarantee that it has been fully demined. An oil tanker explosion with a naval mine would be an environmental disaster that would further halt shipping. Following the armed conflict, Iran would have an affirmative obligation under Hague VIII to remove its own mines. Still, commercial shippers would have to trust Iran that this has taken place. And removing mines is notoriously difficult. Since 1997, a multinational naval mine clearance and ordnance disposal operation has been conducted in the Baltic Sea to clear and destroy an estimated 160,000 mines from the First and Second World Wars, and just 20% have been removed or destroyed.

Complicating matters, at this very moment, the U.S. Navy is retiring its four Avenger-class minesweepers previously homeported in the Middle East and moving toward a different strategy. The new strategy for mine countermeasures is untested and focuses on using the Littoral Combat Ship (LCS) in combination with helicopter support, drones, and Explosive Ordnance Disposal personnel. In an apparently shortsighted move, just one month before the Iran conflict began, the four Avenger-class minesweeper vessels left their home port of Bahrain to be decommissioned and scrapped in the Philadelphia Naval Shipyard. The U.S. Navy acknowledges that the LCS “will always struggle to achieve the same level of Mine Countermeasure proficiency” as dedicated minesweepers. It remains to be seen whether the combination of LCS, helicopters, Explosive Ordnance Disposal, and Navy-trained dolphins (with natural sonar capability) can fill the gap left behind by these departed minesweepers. Finding naval mines in an international strait is already notoriously difficult, particularly in an international strait that has so much existing debris that camouflages the existence of mines.

Can U.S. Navy vessels escort civilian vessels transiting the Strait?

Yes, but transiting remains highly hazardous, and the U.S. Navy lacks the capacity to conduct counter-mine operations quickly and expeditiously. During the Tanker Wars in the late 1980s, U.S. Navy warships escorted civilian tankers through the Strait of Hormuz, with many Kuwaiti vessels reflagged as American vessels. The U.S. Navy has warships and other assets in the region that could assist with this mission, but the Navy is far smaller than the 1980s Navy with the retirement of the Oliver Hazard Perry-class frigates. Quantity has its own quality, and escorting civilian tankers would both expose the Navy warships to Iranian naval mines and projectiles while taking the warships away from other potentially critical missions. Unilateral, U.S.-only escort is not a viable option at this time. The United States should lay the groundwork to bring in other nations for a broader multinational escort initiative, an effort that

President Trump has started to undertake at least in the past 24 hours. But this, too, will be challenging. Japan, a longstanding U.S. ally, relies on the Middle East for 95% of its oil. Japanese leaders have urged caution following Trump's request to help secure shipping through the Strait of Hormuz, stating that such a deployment faces an "extremely high hurdle."

What does naval doctrine say about mine countermeasures?

Mine warfare under Navy doctrine encompasses the countering of enemy-laid mines to permit friendly maneuver. Doctrine makes clear that the most effective means for countering a mine threat is to prevent the laying of mines in the first place—this is known as "offensive mine countermeasures." Defensive countermeasures are designed to counter mines once they have been laid. While it is hard to know with certainty whether Iran has mined the Strait of Hormuz, we may already be in the far, far more challenging defensive mine countermeasure phase.

Navy doctrine requires ships and aircraft engaging in mine countermeasures to have adequate force protection if conducted in a hostile environment—a virtual impossibility at this time in light of the Shaheed drone threat.

Where do we go from here?

Iran's attacks on civilian merchant vessels are clear violations of the law of armed conflict — the principle of distinction between civilian and military objects is among the most foundational rules of IHL, and there is no plausible military justification for striking Thai, Japanese, or Marshallese-flagged commercial ships. If reports of mining are confirmed, that escalation compounds the violation: Hague VIII explicitly prohibits the use of mines to deny transit passage of international straits, and the obligation to protect neutral shipping from indiscriminate hazards is not suspended by armed conflict.

In any armed conflict, the enemy has a vote, and Iran has apparently voted to close, or sharply suppress transit through, the Strait of Hormuz. Iran has correctly identified economic disruption as the pressure point most likely to advantage it in the ongoing war. The Strait of Hormuz has long been recognized as one of the world's most strategically vital and legally complex maritime passages. The current conflict has made concrete what legal scholars and naval strategists have long warned: international law provides robust protections for transit passage rights, but it provides no reliable mechanism for enforcing them when a State actor is willing to violate them at scale.

Secretary Hegseth's dismissal of the Strait crisis limits the kind of active diplomatic and multilateral response that international law and operational realities demand. The United States faces a shrunken surface fleet and an untested and transitional mine countermeasures capability. The Strait's geography inherently favors the defender. The Tanker War playbook of 1987-88 — convoy escort, reflagging, a large frigate fleet — is not readily available in 2026. If mining occurs, restoring safe transit will likely require a multinational naval effort and weeks of painstaking mine-countermeasure operations.

The crisis in the Strait of Hormuz reveals a fundamental weakness in the law of the sea: transit passage is strongly protected in doctrine but difficult to enforce in practice when a coastal State is willing to violate the rules. In that sense, the Strait is not only a strategic chokepoint — it is a stress test for the international legal order governing global commerce.

The Risks of Gender-Blind Conflict Analysis (Just Security) By Ambassador Melanne Vermeer and Jessica Anania
March 20, 2026

Armed conflict has surged to the highest levels in modern history — a trend now underscored by the eruption of a new war in the Middle East. Conflict- and disaster-related humanitarian needs are staggering yet under-resourced. Climate change is creating greater insecurity. Democratic safeguards and other checks on rising conflict and autocracy are, for many countries, in tatters. Yet, when officials and others plan for security, too often half the story is missing. The experiences and roles of women are indelibly linked to national and global stability and prosperity, yet they are commonly overlooked in forecasting and response.

Given the scale of today's crises, involving women and taking them into account is a security imperative. Their omission from data and prediction is persistent, yet women's criticality to security is evident when it comes to the analysis and action required to understand conflict dynamics and trajectory, identify early warning signs of insecurity, and respond accordingly, including in negotiations for peace and in rebuilding in the aftermath.

Women's Erasure from Data

Women's exclusion from security planning at all levels is both the result of — and reinforces — a critical data gap. In national databases globally, only 50 percent of indicators — such as those tracking education, health, and economic outcomes — have sex-disaggregated data, while 32 percent lack any data from the past decade. This omission extends to public discourse as well: less than 2 percent of news stories address gender-based violence or challenge gender stereotypes, representing the lowest levels in 30 years of monitoring. Women comprise just 26 percent of news sources quoted in media coverage, and on high-profile topics like economics and politics, men's voices dominate women's by ratios as high as 31 to 1.

These discrepancies reflect women's underrepresentation in leadership positions and scholarship related to security. For instance, women comprised just 13 percent of defense ministers, according to a 2024 United Nations report. Women also make up just 35 percent of academics in security studies globally, with even lower rates of representation when considering publication in top security journals.

This problem is self-perpetuating. Funding shortfalls not only lead to reduced global data-gathering and reporting but also eliminate resources to track backsliding and hold institutions accountable for these gaps. Recent aid cuts have devastated civil society and research organizations that capture insights on gender-related experiences of conflict. Women-led organizations — often the only ones able to reach and account for the most vulnerable women and girls — are particularly exposed to resource scarcity. Just 0.4 percent of bilateral aid from donor countries worldwide went to feminist organizations led by women in 2022-2023, a figure that likely has shrunk even more following aid cuts.

Amid these pressures, research, data, and investigative reporting that focuses on women and girls is likely to further dwindle. Meanwhile, women journalists, researchers, and community leaders face unprecedented attacks, including physical and digital violence — in 2025, 75 percent of women journalists surveyed reported experiencing online violence. When those documenting women's experiences are silenced, the erasure deepens and blind spots in conflict analysis and forecasting grow.

Insight Into Armed Groups and Conflict Trajectory

Violence against women, including conflict-related sexual violence, is a key dimension for understanding and anticipating changes in the security landscape. Sexual and gender-based violence by armed actors is an early warning indicator of conflict escalation. Increases in sexual violence during inactive conflict years can predict a return to active fighting, as it suggests rebel groups — which often use sexual violence as a socialization mechanism — are recruiting, maintaining, and mobilizing combatants.

Fluctuations in patterns of sexual and gender-based violence can also illuminate armed groups' behavior and strategy. Spikes in conflict-related sexual violence have been associated with armed groups seeking to expand and strengthen territorial control and can signal the arrival and movements of fighters in an area. High rates of sexual violence can also imply larger numbers of foreign fighters within rebel groups, significant reliance on child soldiers, and greater strength of rebel groups compared with pro-government militias. Abuses against women and girls are also an important driver of recruitment into armed groups as communities pick up arms to defend or avenge their loved ones and as women and girls seek to protect themselves from assault.

Over the longer term, sexual violence during conflict is a significant driver of refugee migration among both women and men. Additionally, such violations undermine local trust and can stoke lingering resentment, impeding peacekeeping efforts, undermining peace deals, and imperiling long-term economic investment in these settings. Sexual and gender-based violence, which predominantly impacts women and girls, thus remains a key facet to accurately assessing and anticipating armed conflict dynamics and outcomes. Ensuring recognition of women and girls' wartime experiences is therefore not a benevolence — it is strategic.

Early Warning of Insecurity, Even in Seemingly Stable Democracies

Women's status and safety are powerful, consistent predictors of a country's peacefulness and security, even in countries not currently experiencing armed conflict. Misogyny and violence against women routinely precedes broader security threats, including political and extremist violence. Analysis across more than 155 countries finds that women's subordination is linked to greater willingness among men and boys to commit acts of political terror and violence. This can be observed at the individual level; nearly all mass shooters in the United States have a record of intimate partner violence, stalking, sexual assault, or online harassment and misogyny. Research in Indonesia, Bangladesh, the Philippines, and Libya revealed that sexist beliefs and tolerance for violence against women are the most powerful predictors of support for violent extremism, more so than other factors like religiosity, age, education, and employment. In Nigeria, local tracking of women's presence in common public areas was found to be a useful indicator for understanding perceived and relative security in communities. Rising attacks on women can thus forewarn of looming instability. Yet, indicators related to women's status are rarely integrated into standard threat assessment frameworks, despite their recognized value.

Online and physical attacks targeting women are also often the first sign of democratic backsliding — a key risk factor for conflict at home and abroad. Suppression of women's political involvement has also been identified as a mechanism for autocratic consolidation and populist mobilization, meaning anti-democratic forces are incentivized to undermine women's secure participation and weaken gender equality. Recognizing these symptoms — including attacks on women leaders, female candidates dropping out of races, or rollbacks of women's rights — can provide further early alert of democratic erosion.

Women Impact the Stability of Peace Negotiations and Deals

By adopting a gender-neutral approach, conflict analysis often misses opportunities or weaknesses in peace negotiations and agreements related to women's participation. Research conclusively demonstrates that women's inclusion in peace processes promotes more successful negotiations and strengthens the durability and performance of resulting agreements. For instance, collaboration and information-sharing between women's groups and women delegates has been shown to result in agreements that have more political reform provisions and are more likely to be implemented. Women's greater participation in post-conflict society is also linked to a lower likelihood that civil war will resume, a finding that suggests agreements that create pathways for women's greater involvement in public life may enhance the durability of peace. Yet, women's absence often goes unnoticed and is rarely identified as a potential weakness in a peace process.

The current conflict landscape reflects this oversight. Talks to end brutal fighting in Sudan have relegated women to the sidelines. Despite holding high-level political positions and having extensive relevant experience, women are not formally included in negotiations to end the war in Ukraine. And strikingly, no Israeli or Palestinian women have been included in the U.S.-led Board of Peace, including on its Gaza Executive Board, which will direct the National Committee for the Administration of Gaza (NCAG). One woman has been appointed to the 12-member NCAG. Across these contexts, women's absence is often unremarked upon or is treated as a special interest separate from security concerns, rather than being weighed as a potential liability. This risks hindering the pursuit of any sustainable peace and rebuilding.

Conclusion

Women's exclusion from conflict analysis is not an outlier, but a systemic failure in how policymakers understand, predict, and respond to crises. Looking forward, implementing and resourcing efforts to gather gender-disaggregated data and overcome data gaps is crucial to gaining an accurate picture of the conflict and security landscape. Integrating indicators related to women's status, violence against women, and women's participation can help also strengthen understandings of conflict dynamics and develop more accurate risk assessments and predictions.

To meet this urgent need, the Georgetown Institute for Women, Peace and Security undertook an extensive analysis of potential security crises in the coming year, focusing on women and girls. This report, *Women, Peace and Security: Conflicts and Trends to Watch in 2026*, complements existing predictive tools for crisis and conflict that remain largely gender-blind. Its insights build upon the WPS Conflict Tracker's monthly monitoring and analysis of security threats in 27 conflict-affected settings. Findings underscore the importance of recognizing women's experiences and agency in conflict zones

to ensure truly representative and more accurate forecasting.

The relevance of women to conflict, democratic resilience, and peacebuilding is clear and evidence-based. To more effectively confront the challenges that lie ahead in 2026, women must be counted. Security demands nothing less.

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WORTH READING

Can an Aggressor Invoke Article 89 of the Chicago Convention? Reflections on the Appeal from the ICAO Council Decision dated 30 June 2025 (Russian Federation v. Australia and Netherlands Case) (International Law Blog) By Luciano Pezzano
March 9, 2026

On 18 September 2025, Russia instituted proceedings against Australia and the Netherlands before the International Court of Justice (ICJ) under Article 84 of the 1944 Convention on International Civil Aviation (the “Chicago Convention”). Its Application constitutes an appeal against the decision rendered by the Council of the International Civil Aviation Organization (ICAO Council) on 30 June 2025, in the proceedings initiated against Russia under the Chicago Convention, regarding the shoot down of Malaysian Airlines Flight MH17 that occurred on 17 July 2014.

In its first-ever decision on the merits of a dispute –yet to be published by ICAO but reproduced in Annex 2 of Russia’s Application–, the ICAO Council found that the shooting down of Flight MH17 on 17 July 2014 constitutes a non-conformity by Russia with its obligations under Article 3 bis of the Chicago Convention (which imposes on States the duty to refrain from resorting to the use of weapons against civil aircraft in flight).

However, Russia (in its first case as an applicant before the ICJ) claims that Article 3 bis does not apply to situations of armed conflict and, in any case, the ICAO Council lacks jurisdiction to decide the case, because under Article 89 of the Chicago Convention it does not apply to action of States in situations of armed conflict (or “war”, according to the text of the article).

The case involves complex issues regarding the appellate jurisdiction of the ICJ, and the main points of discussion around Article 89 will probably be the relationship with Article 3 bis and the scope of the latter. However, its invocation by Russia and the consideration given to it by the ICAO Council leave room for the theoretical discussion regarding the interpretation and scope of Article 89 in case of aggression. In particular, can an aggressor State invoke Article 89 in case of a war initiated by itself with an act of aggression?

In this contribution, I will argue that an aggressor cannot validly invoke Article 89 in order to elude its obligations under the Chicago Convention. To that end, I will briefly review the invocation of Article 89 in the case, then I will explore two issues of interpretation of the provision, particularly the meaning of “war”, and, finally, I will present my arguments regarding the seriousness of aggression and its effects on treaties.

Article 89 in the case

Article 89 of the Chicago Convention provides:

“In case of war, the provisions of this Convention shall not affect the freedom of action of any of the contracting States affected, whether as belligerents or as neutrals. The same principle shall apply in the case of any contracting State which declares a state of national emergency and notifies the fact to the Council.”

In its Application, Russia holds that the ICAO Council failed to correctly interpret and apply Article 89 of the Chicago Convention, and that, by virtue of Article 89, which constitutes a “military exclusion clause”, the Chicago Convention does not apply to action of States in situations of armed conflict.

It also holds that, since the downing of Flight MH17 occurred in the context of an armed conflict, and the Council’s jurisdiction is limited to resolving differences concerning the interpretation and application of the Chicago Convention exclusively, the Council should have dismissed the claim brought by the Respondents in its entirety, because it does not have competence under Article 84 of the Chicago Convention to settle differences arising in such context.

The relevant paragraph of the ICAO Council decision reads:

“The provisions of Article 3 bis of the Chicago Convention are clear. Contracting States recognize that each State must refrain from resorting to the use of weapons against civil aircraft in flight. Article 3 bis does not modify the rights and obligations of States as set forth in the Charter of the United Nations, which includes States’ inherent right to self-defence. Article 89 of the Chicago Convention provides that in case of war, the provisions of the Convention shall not affect the freedom of action of Contracting States affected, whether as belligerents or as neutrals. These provisions make it clear that a State’s use of force in accordance with the Charter of the United Nations or its operations in armed conflict in accordance with international humanitarian law do not violate Article 3 bis” (para .1)

If Article 89 makes it clear that a State’s use of force in accordance to the Charter does not violate Article 3 bis, what happens when a State’s use of force is contrary to the Charter? Moreover, what happens when that use of force is an act of aggression? The answers to these questions lie in the terms of Article 89, interpreted in the context of contemporary international law.

Interpretation of Article 89

Two issues are of great importance in order to interpret Article 89: the meaning of “freedom of action” and the meaning of “war”.

“Freedom of action” means, in the context of Article 89, that States may choose not to be bound by any provision of the Convention (Klenka, p. 134). Some authors consider that it amounts to a suspension of parties’ obligations under the Convention (Gestri, p. 181). As Russia argues, it functions as an exception clause: in case of war, the provisions of the Convention could not limit the actions taken by States, even if they are in principle incompatible with the Convention.

Regarding the second issue, since the Convention was adopted before the UN Charter, the meaning of the term “war” has to be interpreted in the light of the ulterior developments in the field of jus ad bellum and jus in bello, especially having in mind the prohibition of the use of force under Article 2(4) of the Charter

Indeed, the Chicago Convention was drafted in 1944, during WWII, and Article 89 is based on Article 38 of the Paris Convention, adopted in 1919, before the outlawing of war with the Kellogg-Briand Pact of 1928. However, in contemporary international law, the term “war” has no legal meaning (O’Connell and Niyazmatov, p. 196; Pezzano, p. 321), having been replaced for “armed conflict” for the purposes of jus in bello (Zhang, p. 465). Therefore, “war” in Article 89 is an international armed conflict, a situation characterized by armed hostilities involving comprehensive use of force between two or more States (Gestri, p. 135).

However, if the “war” of Article 89 involves the use of force, and the use of force is, in principle, prohibited by international law under Article 2(4) of the Charter, is there any possibility of analyzing the legality of the use of force that initiates the conflict triggering the application of Article 89? In other words, can the aggressor state validly invoke Article 89 to maintain its “freedom of action” and suspend the application of the provisions of the Chicago Convention? I will offer some arguments for a negative answer to this question.

Seriousness of aggression and its effects on treaties

Aggression is, according to the preamble of the Definition annexed to resolution 3314 (XXIX) of the UN General Assembly –the most authoritative definition of aggression in international law–, “the most serious and dangerous form of the illegal use of force”. It is also the paradigmatic example of a serious

breach of an obligation arising under a peremptory norm of international law, according to Article 40 of the Draft Articles for the Responsibility of States for Internationally Wrongful Acts (ARSIWA), since the prohibition of aggression is universally recognized as a jus cogens norm. Seriousness is, therefore, a definitive feature of aggression.

It is important to recall that the effect of Article 89 amounts to a suspension of the Chicago Convention in case of war. As Woodworth rightly pointed out, that draws a direct link to the International Law Commission's (ILC) Draft Articles on Effects of Armed Conflicts on Treaties. Article 15 of the Draft Articles provides a clear solution for the case of an aggressor State:

“A State committing aggression within the meaning of the Charter of the United Nations and resolution 3314 (XXIX) of the General Assembly of the United Nations shall not terminate or withdraw from a treaty or suspend its operation as a consequence of an armed conflict that results from the act of aggression if the effect would be to the benefit of that State”

The provision, as the ILC explains in its commentary, prohibits an aggressor State from benefiting from the possibility of suspension of the operation of a treaty, as a consequence of the armed conflict that this State has provoked (para. 2). This is an application of the principle *ex injuria jus non oritur*, since an aggressor State cannot benefit itself from its own aggression.

If an aggressor State cannot benefit from the suspension of a treaty, it cannot also benefit from an exception clause that allows the suspension of certain of its obligations under a specific treaty, like Article 89 of the Chicago Convention. The seriousness of aggression and its consequences in the international legal order serve as a basis for this conclusion. I have already proposed this interpretation regarding the security exception under Article XXI(b)(iii) of GATT –which also involves the term “war”–, and I think it is the most logical solution also for Article 89 of the Chicago Convention.

If, by virtue of Article 89, States have “freedom of action”, it is clear that this is not an unlimited freedom, but rather one governed not by the provisions of the Convention, but by the norms of international law, which naturally include Article 2(4) of the Charter and the (peremptory) prohibition of aggression. It would be an absurd situation if the aggressor can invoke Article 89 to justify a supposed “freedom of action” that international law does not recognize.

The prohibition of aggression places the aggressor in a very different legal position than the victim. Enabling aggressors to invoke clauses like Article 89 in order to to suspend treaty obligations could amount to offering them a valid way to consolidate the aggression, and international law, as a legal order, does not allow such a possibility.

Final remarks

It would be difficult to apply these ideas in *Russia v. Australia and Netherlands*. Mainly, because the case will revolve around the interpretation and application of Article 3 bis, but also because the legal qualification of Russia as the aggressor in the conflict in the Donbas in 2014-2022 is less clear than the situation after the invasion of 24 February 2022, condemned by the UN General Assembly as an aggression. Even if one considers that Russian aggression against Ukraine started in 2014 with the occupation and annexation of Crimea –as the Council of Europe does–, there are no authoritative determinations in that sense regarding the East of Ukraine, where the shooting down of the MH17 flight took place. Of course, the Respondents could use the argument if they consider that Russia's aggression started in 2014.

However, the case offers the singular opportunity for theoretical reflections regarding the invocation of Article 89 –and similar exceptions clauses in other treaties– in case of aggression. According to these reflections, in the event of a “war” (international armed conflict) initiated as a result of an act of aggression, the aggressor cannot invoke Article 89 of the Chicago Convention to claim a “freedom of action” that implies the suspension of its obligations under the Convention: these obligations will remain intact and continue to be applied in full, including the rules of fundamental importance on the safety of civil aviation.

The importance of the jus cogens norms at stake, the seriousness of aggression and the unity of the international legal order demand this interpretation.

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